PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos: 02-1103/1124/1276

THE MAJOR LEAGUE UMPIRES ASSOCIATION

—v.—

THE AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS; THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS; OFFICE OF THE COMMISSIONER OF BASEBALL

(D.C. No. 01-cv-02790)

OFFICE OF THE COMMISSIONER OF BASEBALL; AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS; NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS

—v.—

MAJOR LEAGUE UMPIRES ASSOCIATION; WORLD UMPIRES ASSOCIATION

(D.C. No. 01-cv-02816)

The Major League Umpires Association,

Appellant No. 02-1103

THE MAJOR LEAGUE UMPIRES ASSOCIATION

—v.—

THE AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS; THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS; OFFICE OF THE COMMISSIONER OF BASEBALL

(D.C. No. 01-cv-02790)

OFFICE OF THE COMMISSIONER OF BASEBALL; AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS; NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS

—v.—

MAJOR LEAGUE UMPIRES ASSOCIATION; WORLD UMPIRES ASSOCIATION

(D.C. No. 01-cv-02816)

Office of the Commissioner of Baseball;
American League of Professional Baseball Clubs;
National League of Professional Baseball Clubs

Appellants No. 02-1124

THE MAJOR LEAGUE UMPIRES ASSOCIATION

Appellant No. 02-1276

—v.—

THE AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS; THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS; OFFICE OF THE COMMISSIONER OF BASEBALL

Appeal from the United States District Court
for the Eastern District of Pennsylvania

(D.C. Civil Action Nos. 01-cv-02790, 01-cv-02816)

District Judge:
Honorable Harvey Bartle, III

Argued on December 9, 2002
(Opinion filed: February 17, 2004)

Before: *BECKER, *Chief Judge,*
ROTH and SMITH, *Circuit Judges*

Patrick C. Campbell, Jr., Esquire **(Argued)**
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* Judge Becker's term as Chief Judge ended on May 4, 2003.

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OPINION

ROTH, Circuit Judge:

This appeal involves a labor dispute between Major League Baseball and its umpires, the majority of whom resigned in protest over what they viewed as objectionable policies which the Commissioner of Baseball sought to implement during the 1999 season. Although all of the resigning umpires eventually attempted to rescind their letters of resignation, the events that followed left a substantial number of them unemployed. The twenty-two unemployed umpires subsequently filed grievances that were submitted to an arbitrator.

The District Court confirmed the Arbitrator's determination that the dispute fell within the scope of the arbitration clause of the collective bargaining agreement (CBA), and further confirmed the Arbitrator's disposition of the grievances of nineteen of the umpires. In their

appeals, both sides challenge the confirmation of the portions of the Award unfavorable to them. In addition, the Leagues contend that the dispute was not arbitrable in the first instance. For the reasons stated below, we will affirm the judgment of the District Court.

I. Factual Background

The Major League Umpires Association (MLUA or Association) represents umpires employed by both the American League of Professional Baseball Clubs and the National League of Professional Baseball Clubs. The American and National Leagues together comprise what is commonly referred to as Major League Baseball (MLB). Each League has its own president, operates as a separate entity, and employs its own umpires. Generally speaking, the Commissioner of Baseball broadly oversees the operation of the Leagues and participates in decisions affecting the game as a whole. However, control over the employment and discipline of umpires has historically rested with the respective League presidents.

The dispute at issue arose during the 1999 baseball season over what the MLUA perceived as an attempt by the Commissioner of Baseball, Allan H. "Bud" Selig, to strip the League presidents of supervisory power over umpires and to centralize that power in the Commissioner's Office. Specifically, the MLUA believed that Commissioner Selig was attempting to implement various new policies that violated the CBA between the MLUA and the Leagues.[1]

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[1] These policies included proposals to (1) evaluate the consistency of individual umpires' interpretation of the strike zone; (2) utilize a computerized "pitch simulator" to improve umpire training; (3) use MLUA umpires to officiate an exhibition game to be played in Cuba without engaging in separate negotiations with the MLUA, as was purportedly the traditional method of addressing issues sur-

To resolve its disputes with the Leagues, the MLUA attempted to force the Leagues to negotiate with it over the proposed new policies by organizing a mass resignation of its members. The MLUA apparently believed that, by electing to pursue a mass resignation strategy as opposed to a strike or other form of work stoppage, it could avoid violating the no-strike clause contained in the CBA[2] and force the Leagues to bargain because the voluntary resignation of its members would trigger the Leagues' obligation to pay the resigning umpires approximately $15 million in severance compensation. Fifty-seven of the MLUA's sixty-eight members agreed to participate in the mass resignation; twenty-three from the American League and thirty-four from the National League. On July 15, 1999, each of the resigning umpires sent a letter to his respective League president stating that he resigned his position effective September 2, 1999. Umpires with more than ten years on the job also demanded severance pay due under the CBA as a result of voluntary termination.[3] In addition, each of the fifty-

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rounding exhibition games; and (4) enlist the aid of club general managers to "chart" pitches in an effort to determine whether umpires were properly interpreting the----------strike zone. The MLUA viewed these proposals as violations of the existing CBA.

[2] The no-strike clause of Article XIX of the CBA states, in relevant part, that "the Association agrees that there shall be no strike nor other concerted work stoppage during the period of this Agreement and further that it will use its best efforts to cause each umpire faithfully to carry out their obligations as employees."

[3] The relevant portion of each letter stated as follows:

> Effective September 2, 1999, I hereby resign from my employment from the [American or National] League pursuant to Article VIII.D of the Basic Agreement between the American League of Professional Baseball Clubs, the National League of Professional Baseball Clubs and the

seven resigning umpires executed a personal services agreement with the newly created Professional Umpire Services, Inc. These agreements stated, in relevant part, that the umpire would render services "exclusively for the Corporation and/or for the Person with whom the Corporation agrees to provide Umpire Services."

Articles of incorporation were filed for Professional Umpire Services on July 9, 1999, but the company never countersigned the personal services agreements or conducted any business. It appears the MLUA planned to use the company as a means of providing the Leagues with umpiring services in the event that the labor dispute was not resolved by the time the resignations took effect on September 2.

On July 22, Commissioner Selig met with American League President Gene Budig and National League President Leonard Coleman in Milwaukee, Wisconsin, in an effort to determine how best to respond to the resignations. After some discussion, the Leagues decided not to negotiate with the MLUA.

There are conflicting versions of what transpired at this meeting. The MLUA contends that there was no immediate threat to the continuing operation of MLB, as the resignations did not become effective until several weeks after the meeting. It further argues that Commissioner Selig essentially forced the League presidents to begin hiring replacement umpires in an effort to manufacture a claim of detrimental reliance and to break the union. The Leagues counter that they viewed the mass resignation strategy as a violation of the CBA's "no-strike" clause, and therefore began hiring replacement

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Major League Umpires Association dated January 1, 1995. [Where applicable:] I hereby demand my voluntary termination pay.

umpires to ensure the continued operation of MLB during the upcoming League playoffs and World Series.

By the end of the day on July 22, the Leagues had hired a total of twenty replacement umpires (eight in the National League and twelve in the American League).[4] As a result, it soon became clear to MLUA members that the mass resignation strategy was a failure. Many began to rescind their letters of resignation. Despite the capitulation of some of its members, however, the MLUA continued to exert pressure on the Leagues. On July 23, it filed a declaratory judgment action in the Eastern District of Pennsylvania seeking to establish the resigning umpires' rights to termination pay and benefits.

Through a combination of new hires and resignation rescissions, the American League returned to full staff by July 26. In contrast, relatively few National League umpires had rescinded their resignations as of that date, and National League President Coleman hired five more replacement umpires. On July 27, the remaining thirty-two National League and six[5] American League umpires attempted to rescind their resignations *en masse*. However, because of the new hires and previous resignation rescissions, only nineteen National League positions remained open. As stated above, all of the American League positions had been filled by that date.

Because he had no positions left to fill, American League President Budig simply refused to allow any of the final six American League umpires to rescind their

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[4] The District Court puts the number at 17 (8 in the NL and 9 in the AL). However, the Arbitrator found 12 replacements in the AL, and thus 20 overall. As the Arbitrator was the fact-finder in this case, we have adopted his number.

[5] The District Court listed the names of seven AL umpires who tried to rescind on July 27, but the Arbitrator put the number at six. Again, we have adopted the Arbitrator's number.

resignations.[6] National League President Coleman faced a more difficult situation, as he was forced to determine which of the remaining thirty-two National League umpires would be permitted to rescind their resignations. In order to make this determination, he invoked Article VIII A of the CBA, which provides in its second paragraph that "[a]ll umpires shall be selected or retained in the discretion of the League Presidents on the basis of merit and the skill of the umpire to perform to Major League standards." Applying this provision at least in part, Coleman selected nineteen umpires from the thirty-two and permitted those nineteen to rescind their letters of resignation. Coleman then accepted the resignations of the remaining thirteen National League umpires.

By the end of this imbroglio, twenty-two of the fifty-seven MLUA members who participated in the mass resignation scheme, nearly one-third of the Association's total membership, were unemployed (nine from the American League and thirteen from the National League). All twenty-two of these umpires filed grievances under the CBA.

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[6] These umpires received a letter from American League President Budig stating, in relevant part:

> On July 15, 1999, I received from your union, the Major League Umpires' Association, a letter from you dated July 14, 1999, resigning from your employment as an umpire with the American League. I deeply regret that you decided to take part in this concerted resignation plan instigated by the Major League Umpires' Association. However, you have left me with no choice but to accept your resignation and to fill the vacancy that your resignation has created along with the other vacancies that were created by this mass resignation strategy. The hiring process is now complete. The American League has hired a permanent employee to fill the vacancy

II. Procedural History

The MLUA filed its Demand for Arbitration of the grievances on August 27, 1999. On August 30, the MLUA sought an injunction from the United States District Court for the Eastern District of Pennsylvania to prevent the Leagues from dismissing the twenty-two umpires whose resignations had been accepted and were due to take effect on September 2. The District Court held a hearing on September 1. Following this hearing, the parties executed a Memorandum of Understanding stating that the MLUA would withdraw its complaint and that the parties would submit the matter to an arbitrator. The Memorandum of Understanding also permitted either side to "raise in such arbitration whatever procedural and substantive arbitrability arguments . . . the parties may have."

In November 1999, the Leagues, contending that the dispute at issue did not fall within the scope of the CBA's arbitration provision, moved to dismiss the grievances. The Arbitrator denied this motion on November 26, 1999. Both sides were represented by counsel during the arbitration proceedings, which included seventeen days of testimony over the course of approximately one year.

Following completion of the proceedings, the Arbitrator issued his Opinion and Award on May 11, 2001. The Arbitrator sustained the grievances and ordered the reinstatement of two American League umpires (Coble and Kosc), and seven National League umpires (Darling, Hohn, Tata, Pulli, Poncino, West, and Vanover) with full back pay and benefits. It denied the grievances of all of

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created by your resignation and each resignation submitted by an American League umpire that was not rescinded.

Thank you for your service to the American League and I personally wish you the best in your future endeavors.

the remaining American and National League umpires. Both sides subsequently filed actions in the Eastern District of Pennsylvania seeking to vacate the portions of the Award unfavorable to them. In addition, the Leagues challenged the Arbitrator's denial of their motion to dismiss the dispute as non-arbitrable.

The District Court held that the Leagues had properly preserved their objection to arbitrability. It nevertheless confirmed the Arbitrator's conclusion that the dispute was arbitrable. As for the merits of the parties' arguments, the District Court confirmed the Arbitrator's conclusion that the Leagues were entitled to hire replacement umpires in reliance on the letters of resignation submitted by the grievants, as well as confirming his determination that American League President Budig was not required to accept the six resignation rescissions submitted on July 27 in view of the fact that the American League was fully staffed by that date.

The District Court further confirmed the Arbitrator's application of the Article VIII "merit and skill" criteria to the determinations made with respect to all but three of the National League umpires, and his decision, following this application, to require the National League to reinstate seven umpires (Darling, Hohn, Tata, Pulli, Poncino, West, and Vanover) who satisfied this criteria despite the fact that all National League positions had been filled. Finally, the District Court confirmed the Arbitrator's conclusion that three additional National League umpires (Davidson, Gregg, and Hallion) need not be reinstated because they failed to satisfy the Article VIII merit and skill criteria.[7] On appeal, both sides

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[7] The District Court also confirmed the Award as to two American League umpires (Coble and Kosc) and vacated the portion of the Award that upheld the National League's discharge of three other umpires (Nauert, Dreckman, and Holbrook) with less than five years'

contend that the District Court erred in confirming the portions of the Award unfavorable to them. Additionally, the Leagues assert that the dispute at issue does not fall within the scope of the CBA's arbitration provision so that it was not arbitrable in the first instance.

III. Jurisdiction and Standard of Review

The District Court reviewed the Arbitrator's Award pursuant to § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185. We have jurisdiction over the parties' cross-appeals of the District Court's final order pursuant to 28 U.S.C. § 1291. Our review of the District Court's ruling is plenary, and we apply the same test applied by the District Court. *Pennsylvania Power Co. v. Local Union No. 272 of the Int'l Bhd. of Elec. Workers, AFL-CIO* (*Pennsylvania Power II*), 276 F.3d 174, 178 (3d Cir. 2001).

IV. Discussion

A. Scope of Judicial Review of Arbitration Awards

We begin our analysis by examining the general legal principles governing federal courts' review of arbitration awards. The first step in any such review involves an examination of the sources of the arbitrator's authority. *See Matteson v. Ryder System, Inc.*, 99 F.3d 108, 112 (3d Cir. 1996) ("Under the Federal Arbitration Act, a district court may vacate an arbitration award if, *inter alia*, 'the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon

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experience. All five initially appealed this ruling, but have since settled their dispute. Thus, their claims are no longer before us, and we do not address them here.

the subject matter submitted was not made.' ") (quoting 9 U.S.C. § 10(a)(4)). Simply stated, "an arbitrator may not venture beyond the bounds of his or her authority," which is defined not only by the terms of the CBA, but also by the scope of the issues submitted by the parties. Id. Thus, "[i]t is the responsibility of the arbitrator in the first instance to interpret the scope of the parties' submission, but it is within the courts' province to review an arbitrator's interpretation." *Id.* at 113.

In conducting this review, " 'the deference that is accorded to an arbitrator's interpretation of the collective bargaining agreement should also be accorded to an arbitrator's interpretation of the issue submitted.' " *Id.* (quoting *Mobil Oil Corp. v. Independent Oil Workers Union,* 679 F.2d 299, 302 (3d Cir. 1982)). This is so because (1) "a more searching judicial review of submissions . . . would undermine the congressional policy of promoting speedy, efficient, and inexpensive resolu tion of labor grievances"; (2) "interpretation of a submission must often occur in the context of the collective bargaining agreement itself," thereby resulting in an inconsistency if the arbitrator's interpretation of the CBA receives deference but his or her determination of the scope of the submission does not; and (3) "requiring courts to engage in a close examination of the submissions to arbitrators would put a considerable strain on judicial resources." *Id.* (citing *Mobil* Oil, 679 F.2d at 302).

Our role in reviewing the outcome of the arbitration proceedings is not to correct factual or legal errors made by an arbitrator.

> Courts are not authorized to review the arbitrator's decision on the merits despite allegations that the decision rests on factual errors or misinterprets the parties' agreement . . . . When an arbitrator

> resolves disputes regarding the application of a contract, and no dishonesty is alleged, the arbitrator's 'improvident, even silly, factfinding' does not provide a basis for a reviewing court to refuse to enforce the award.

Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 509 (2001) (internal citations and quotations omitted). We should uphold an arbitration award that "draws its essence from the collective bargaining agreement" because "the parties to the collective bargaining agreement 'bargained for' a procedure in which an arbitrator would interpret the agreement." *National Ass'n of Letter Carriers, AFL-CIO v. United States Postal Serv.*, 272 F.3d 182, 185 (3d Cir. 2001) (noting that a court should uphold an arbitration award) (citing *Eastern Assoc. Coal Corp. v. United Mine Workers*, 531 U.S. 57, 62 (2000)); *United Indus. Workers v. Gov't of the V.I.*, 987 F.2d 162, 170 (3d Cir. 1993) (holding that a court may not "overrule an arbitration decision because it finds an error of law"); *Tanoma Mining Co. v. Local Union No. 1269, United Mine Workers of Am.*, 896 F.2d 745, 747 (3d Cir. 1990) (noting that, because "the parties have bargained for the arbitrator's decision, 'it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept. An award may fairly be said to "draw[ ] its essence from the bargaining agreement if the interpretation can in *any rational way* be derived from the agreement, viewed in light of its language, its context, and any other indicia of the parties' intention." *United Transportation Union Local 1589*, 51 F.3d at 379-80 (internal quotations omitted).

Moreover, an award may be vacated if the arbitrator demonstrates manifest disregard for the CBA. See *Newark Morning Ledger Co. v. Newark Typographical Union Local*, 797 F.2d 162, 165 (3d Cir. 1986). Manifest

disregard for the CBA is established when the arbitrator's award is " 'totally unsupported by principles of contract construction.' " *Exxon Shipping Co. v. Exxon Seamen's Union*, 993 F.2d 357, 360 (3d Cir. 1993) (quoting *News Am. Publications v. Newark Typographical Union, Local 103*, 918 F.2d 21, 24 (3d Cir. 1990)).

In reviewing an arbitration award, courts "do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts." *Tanoma Mining Co.*, 896 F.2d at 747 (citing *United Paperworkers Int'l Union v. Misco*, 484 U.S. 29, 37-38 (1987)); see *also Mutual Fire, Marine & Inland Ins. Co. v. Norad Reinsurance Co.*, 868 F.2d 52, 56 (3d Cir. 1989) (concluding that "[i]t is not this Court's role . . . to sit as the [arbitration] panel did and reexamine the evidence under the guise of determining whether the arbitrators exceeded their powers."). Rather, arbitration awards enjoy a strong presumption of correctness that may be overcome only in certain limited circumstances, as described above.

With this standard in mind, we turn now to the specific claims at issue here.

B. Arbitrability

In addressing the threshold question of arbitrability, we first must determine whether the CBA empowers the Arbitrator to settle questions of substantive arbitrability, *i.e.*, "whether a particular dispute is subject to the parties' contractual arbitration provision(s)." *Bell Atlantic-Pennsylvania, Inc. v. Communications Workers of Am.*, 164 F.3d 197, 201 (3d Cir. 1999). As we have previously held, "[a]bsent a clear expression to the contrary in the parties' contract, substantive arbitrability determinations are to be made by a court and not an arbitrator." *Id.* at 200. Therefore, contract language submitting the issue of

arbitrability to the arbitrator "must be clear and unmistakable." *PaineWebber Inc. v. Hofmann,* 984 F.2d 1372, 1379 n.4 (3d Cir. 1993).

Here, however, the Leagues conceded before the District Court that the issue of arbitrability was properly submitted to the Arbitrator.[8] We do not therefore have to decide whether it was proper for the Arbitrator to determine arbitrability, merely whether he ignored the plain language of the CBA in his determination of arbitrability. *See National Ass'n of Letter Carriers,* 272 F.3d at 186. In doing so, we are obliged to give that decision "the same deference due an arbitrator's decision on the merits." *United Indus. Workers,* 987 F.2d at 167. Thus, the Arbitrator's determination of arbitrability must be affirmed "as long as it 'draws its essence' from the collective bargaining agreement." *Pennsylvania Power Co. v. Local Union # 272 of the Int'l Bhd. of Elec. Workers, AFL-CIO,* 886 F.2d 46, 48 (3d Cir. 1989). As noted above, this requires only that the Arbitrator's interpre-

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[8] In response to the District Court's query about its standard of review of the arbitrator's decision on arbitrability, counsel for the Major Leagues responded:

> MR. GANZ: If there is no rational – there has to be a rational basis for the arbitrator's determination, that he had authority, and that basis must draw its essence from the collective bargaining agreement.
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> THE COURT: Okay. So there has to be a rational basis for the arbitrator's decision that this matter was subject to arbitration.
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> MR. GANZ: Correct, Your Honor.
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> THE COURT: Okay. So it isn't just my reading of the agreement, I have to give deference to the arbitrator to that extent?
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> MR. GANZ: That's correct. It was for the arbitrator in the first instance, certainly, and you to review that. . . .

Transcript of Oral Argument, November 27, 2001, at pp. 17-18.

tation of the CBA be rationally "derived from the agreement, viewed in light of its language, its context, and any other indicia of the parties intention." *United Transportation Union Local 1589*, 51 F.3d at 380 (citations and internal quotations omitted).

In presenting the issue to the Arbitrator in their motion to dismiss, the Leagues contended that the dispute was not arbitrable because Article VIII of the CBA gives the League Presidents the authority, following a hearing, to issue a "final and binding" decision regarding the termination of an umpire.[9] The MLUA on the other hand maintained that the dispute fell within the broad scope of the general arbitration provision contained in Article XV of the CBA.[10]

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9 Article VIII provides in relevant part in Section A, *Tenure:*

> [1] In the event an umpire with five or more years of service is discharged by a League President, the umpire and the representative of the Association shall be entitled to an explanation of the reasons for his discharge and the umpire shall be entitled at his request to hearing before the League President at which time the discharge shall be subject to full review and re-examination by the League president. The decision of the League President after such hearing shall be final and binding.
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> [2] All umpires shall be selected or retained in the discretion of the League Presidents on the basis of merit and the skill of the umpire to perform to Major League standards. With respect to all such members of the regular staff, there shall be no discrimination or recrimination on the part of any party to this Agreement.

(paragraph numbering added).

10 Article XV provides, in relevant part:

> In the event of a dispute concerning a claimed violation of the provisions of this Agreement by either party thereto the matter shall be referred to the League President involved and a representative of the Association; and if an agreement is

Following his review of the text of Articles VIII and XV, the Arbitrator denied the Leagues' motion to dismiss, ruling instead that, although the first paragraph of Article VIII A vested substantial authority in the League presidents regarding the *termination* of umpires, the second paragraph placed two specific limitations on that authority. First, this "substantial authority" was "limited to issues concerning the 'merit and skill of the umpire to perform to Major League standards'," and, second, it had to be exercised without "discrimination or recrimination." In view of this determination, the Arbitrator concluded that, "to the extent that the Presidents terminated or accepted the resignations of the 22 umpire grievants, as the case may be, the issue of whether this decision was an abuse of discretion or was performed in a discriminatory or recriminatory manner, is subject to arbitration." Rulings Concerning Employer's Motion to Dismiss *et al.* (Rulings) at 3. In confirming the Arbitrator's decision, the District Court held that, "because the parties contracted to arbitrate disputes concerning any 'claimed violation' of the Agreement, and because the current dispute concerning the selection or retention of umpires is such a 'claimed violation,' the arbitrator properly exercised jurisdiction." *Major League Umpires Ass'n v. American League of Professional Baseball Clubs,* No. 01-2790, slip op. at 12 (E.D.Pa. Dec. 13, 2001).

On appeal, the Leagues contend that the issue sought to be arbitrated by the MLUA was whether the Leagues violated the CBA by "terminating" the twenty-two umpires in question. They further assert that the CBA does not provide for arbitration of this issue, and that it

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not reached by these two individuals within ten days the matter shall be referred to an arbitrator mutually agreed upon as sole neutral arbitrator to finally determine the matter.

therefore is not arbitrable. Instead, they argue that, in order to be arbitrable, a dispute must "concern[ ] a claimed violation of the provisions of th[e] [CBA]." (quoting Article XV of the CBA). The Leagues urged that Articles VIII and XV contain two mutually exclusive dispute resolution mechanisms; because the MLUA relied primarily upon Article VIII and the dispute resolution provision of Article VIII makes no mention of arbitration or of Article XV, the Arbitrator should have concluded that there was no agreement to arbitrate the dispute at issue here.

We have reviewed the applicable provisions of the CBA in light of the arguments of the parties and see no basis for vacating the Arbitrator's finding of arbitrability. Although we may question the clarity of the Arbitrator's ruling with respect to this issue, we do not conclude from the record before us that the Arbitrator considered the issue before him to be a simple Article VIII *termination* of the umpires. Rather, in rejecting the Leagues' motion to dismiss, the Arbitrator found the arbitrable issue to be one involving a determination of relative *"merit and skill"* and as well as the *possible abuse of discretion or exercise of discriminatory or recriminatory animus* in the respective League Presidents' decisions regarding the "terminat[ion] or accept[ance] [of] the resignations of the 22 umpire grievants." Rulings at 3. The reference by the Arbitrator to "merit and skill" and to "discriminatory or recriminatory animus" brings us down to the *second* paragraph of Section A of Article VIII. It is, however, the *first* paragraph of the Section A that speaks of "final and binding" review by the League President of umpire *discharges.*

From the foregoing, we conclude that the Arbitrator's initial finding of arbitrability was premised on alleged

violations of the CBA, involving selection of umpire candidates which selection did not involve merit and skill, and further premised on the Arbitrator's determination that he must consider whether there had been discriminatory or recriminatory animus. He determined that such types of violations did not fall under the limited review provision of the *first* paragraph of Article VIII A. By default, then they would fall within the broad scope of the general dispute resolution mechanism contained in Article XV. Thus, the Arbitrator's finding of arbitrability was not conditioned upon a finding that the reasons for the terminations required explanation prior to the exercise of the final and binding review of the League Presidents, as provided for in the first paragraph of Article VIII A. The review required from the nature of the alleged violations would encompass more than the "explanation of the reasons for . . . discharge" set out there and would therefore expand beyond the bounds of the "final and binding" authority of the League Presidents provided for in that *first* paragraph. In sum, we conclude that the Arbitrator did not ignore the plain language of the CBA, *see National Ass'n of Letter Carriers,* 272 F.3d at 186, or demonstrate manifest disregard for the CBA, *see Newark Morning Ledger Co.,* 797 F.2d at 165, when he determined that violations of the provisions of the *second* paragraph of Article VIII A were covered by the arbitrability provisions of Article XV rather than by the specific review of discharges provided for in the preceding *first* paragraph of Article VIII A.

This conclusion is reinforced by the consideration of the arbitrability issue in the Arbitrator's Award. The Arbitrator quoted Article XV, the CBA's general dispute resolution provision, for the proposition that "[t]he dispute resolution language of the agreement gives me the jurisdiction to resolve disputes concerning 'claimed vio-

lations of the provisions of this agreement,' " and then noted that, "[w]hile there may be conflicting views concerning the propriety of the actions taken by both sides in this case, the sole question in this case concerns whether the actions taken were appropriate under the terms of the collective bargaining agreement." Opinion and Award at 71. In this reference to the "terms" of the CBA, the conclusion is evident that the Arbitrator is considering not just the League Presidents' discharge review authority of the first paragraph of Article VIII A but also the "no discrimination or recrimination" language of the second paragraph. From this it follows that the Arbitrator rationally determined that his consideration of whether there had been a violation of the CBA extended beyond a review of the reasons for discharge of an umpire by the League President as set out in the first paragraph of Article VIII A.

We find further reinforcement of this conclusion in the fact that the Arbitrator, in his Award, determined that the grievant umpires had *resigned* their positions, rather than having been *terminated.* For this reason, the Arbitrator concluded that the "limitations" for terminated umpires found in Article VIII A did not apply. We presume that in referring to the "limitations" for terminated umpires of Article VIII A and their inapplicability to the case before him, the Arbitrator had in mind Article VIII A's "final and binding" review of umpire discharges by League Presidents, found in the *first* paragraph.

As noted above, an arbitrator's finding of arbitrability draws its essence from the CBA if it can be rationally "derived from the agreement, viewed in light of its language, its context, and any other indicia of the parties' intention." *United Transportation Union Local 1589,* 51 F.3d at 379-80 (internal quotations omitted). Here, the Arbitrator's denial of the Leagues' motion to dismiss

was based on a determination that the question whether there had been an abuse of discretion and discrimination and retaliation was not constrained by the limitations of the first paragraph of Article VIII A. We conclude that such a determination can rationally be derived from the CBA.

Whether, if faced with the initial determination, we would have come to the same decision is immaterial. There is no basis from which to conclude that the Arbitrator's finding of arbitrability fails to draw its essence from the CBA, as it may logically be derived from the text of that agreement. *See Matteson,* 99 F.3d at 113. Thus, we will affirm the District Court's confirmation of the Award with respect to arbitrability.

C. Detrimental Reliance

Turning then to the merits of the underlying dispute, we begin with the Arbitrator's conclusion that the actions of the umpires amounted to actual resignations, as opposed to a mere threat or notification of future resignations, so that the Leagues acted properly in hiring replacements. The MLUA challenges this determination, contending that this ruling amounted to manifest disregard of the law, was not supported by the record, and failed to draw its essence from the CBA. The MLUA urges that, because no umpire actually relinquished his position prior to September 2, no umpire can be said to have "resigned." Thus, because the umpires did not resign, the Leagues' refusal to accept the umpires' rescissions of their resignations amounted to a discharge in violation of the CBA. The MLUA further claims that there is no evidence in the record to support the Leagues' claims of detrimental reliance.

In response, the Leagues justify their decision to begin hiring replacement umpires for the following reasons:

(1) the inclusion of the phrase "I hereby resign my employment" in each of the resignation letters at issue; (2) the demand for "voluntary termination pay" by each umpire with more than ten years' service; (3) MLUA General Counsel Richard Phillips' statements to the media, which unequivocally indicated that the MLUA members had resigned and would not rescind their resignations;[11] (4) the execution by each resigning umpire of an employment contract with Professional Umpire Services, Inc.; and (5) the filing by the MLUA of an action in the Eastern District of Pennsylvania seeking to establish the Leagues' obligation to make the severance payments required by the CBA in the event of voluntary termination. The Leagues assert that on this record the Arbitrator properly determined that the Leagues were justified in hiring replacement umpires.

We have reviewed the record below and find no basis for disturbing the award with respect to this issue. Under the standards of review of arbitration decisions set out above in Part IV A, the Arbitrator's conclusion that the

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[11] The following exchange between Phillips and an interviewer from the television sports channel "ESPN" provides an example of such statements:

> Phillips: There's not a threat to resign. They have resigned; they have formally resigned their positions. It's not a threat. And they have all signed contracts with a professional services corporation. And, the first thing that they will do is they will receive the in excess of $15 million in severance that baseball owes them.
>
> Interviewer: Can the resignations be rescinded, and - - -
>
> Phillips: No.
>
> Interviewer: Can there be peace between the umpires and major league baseball achieved over the next couple of weeks in some kind of negotiation?
>
> Phillips: No.

umpires resigned and that the Leagues were justified in hiring replacement umpires is well supported by the facts of record and for that reason there is no basis for reversing it. *See Tanoma Mining Co.*, 896 F.2d at 748. Simply put, the Arbitrator considered the MLUA's arguments and, based on the facts and his interpretation of the CBA and applicable law, found that the letters constituted resignations rather than notices of intent to resign. He therefore concluded that the Leagues acted appropriately by hiring replacements in reliance upon these representations.

The District Court found that this conclusion "was not a manifest error of law." Slip op. at 13. We agree. As noted above, because "the parties have bargained for the arbitrator's decision, it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept." *Tanoma Mining Co.*, 896 F.2d at 747 (internal quotation omitted). Thus, we will affirm the District Court's confirmation of the Award with respect to this issue.

D. The Arbitrator's Application of Article VIII's "Merit and Skill" Criteria

The MLUA next challenges the Arbitrator's determination concerning the standards that National League President Coleman was required to apply in making his staffing decisions following the rescission of the remaining resignations on July 27. Specifically, in accordance with the MLUA's position that the letters constituted notices of intent to resign rather than actual resignations, the MLUA contends that the combination of new hires and resignation rescissions resulted in a situation in which the National League was overstaffed and National League President Coleman, in determining whom to retain, should have compared the "merit and skill" of the

rescinding umpires not only as between those umpires but also as to the "merit and skill" of the new hires and that of those umpires who had never resigned. The MLUA urges that the Arbitrator's countenance of Coleman's failure to do so results in a decision which fails to draw its essence from the CBA.

In support of this argument, the MLUA analogizes the present situation to the one that existed in 1979 when its members refused to execute their individual employment contracts at the beginning of the baseball season despite the existence of a no-strike clause. There, the striking umpires were permitted to return to work once the situation was resolved. This resulted in overstaffing, as replacement umpires had been hired in the meantime. The MLUA claims that the current "merit and skill" language was inserted into the CBA as a result of the 1979 incident for the express purpose of preventing the Leagues from trimming the umpire ranks by taking action against those who participate in work stoppages.

In light of the history of the merit and skill provision, and because National League President Coleman admitted during his testimony before the Arbitrator that he never applied the merit and skill criteria to either those umpires who never resigned or those newly hired, the MLUA argues that his actions violated the plain language of the CBA. Further, because American League President Budig never applied the merit and skill criteria in the first instance, the Association asserts that he too violated the CBA and that the Award, which the MLUA contends effectively allows each League to employ a different decision-making process, fails to draw its essence from the CBA.

We again reject the MLUA's arguments. As a preliminary matter, in view of the unequivocal no-strike clause contained in the CBA, we find troubling the assertion

that the merit and skill criteria was inserted in order to protect striking umpires. Indeed, if we were to read Article XIX of the CBA as prohibiting strikes while Article VIII nevertheless protects striking umpires, we would have a very tortured interpretation of the contract.

Moreover, even if there were some arguable merit to the MLUA's attempt to analogize this situation to the job action taken by its members in 1979, the Arbitrator rejected its argument with respect to this issue. *See* Opinion and Award at 88-89. Instead, he found that, unlike the situation that existed in 1979, the 1999 work stoppage at issue here involved: (1) the actual severing of the employment relationship through resignation; (2) the hiring of permanent replacements; and (3) no decision by the League presidents to increase the size of their respective umpire staffs. *Id.* This conclusion does not constitute a manifest disregard for either the CBA or the applicable law. *See Newark Morning Ledger, Co.*, 797 F.2d at 165. Thus, we see no basis for disturbing the District Court's confirmation of this aspect of the Award.

E. The Arbitrator's Resolution of the Claims of Individual Umpires

As discussed above, by the time the remaining thirty-two National League umpires attempted to rescind their resignations on July 27, National League President Coleman, through new hires and prior resignation rescissions, had already filled nineteen of the thirty-two vacant positions. Because of the limited vacancies, he had to accept the resignations of thirteen of the National League umpires. He chose to accept the resignations of the following umpires: Darling, Hohn, Poncino, Pulli, West, Tata, Vanover, Davidson, Gregg, Hallion, Nauert, Dreckman, and Holbrook, all of whom filed grievances. In his Award, the Arbitrator sustained some of the grievances

and denied others. He ordered the reinstatement of National League Umpires Darling, Hohn, Poncino, Pulli, Tata, West, and Vanover (the Darling Group), but denied the grievances and upheld Coleman's acceptance of the resignations of Umpires Davidson, Gregg, and Hallion, (the Davidson Group), as well as Umpires Nauert, Dreckman, and Holbrook (the Nauert Group). The Leagues now contend that the District Court erred in confirming the Arbitrator's construction and application of Article VIII in making these determinations.

Because Coleman elected not to exercise his discretion to increase the size of the National League staff, he was forced to find a method to determine which nineteen umpires would be permitted to rescind their resignations and which thirteen would have their resignations accepted. In so doing, he sought input from the MLUA's counsel, who simply insisted that all decisions be made on the basis of seniority, which would have guaranteed that all resigning MLUA members would be rehired and the new replacement umpires released. Coleman rejected this suggestion.

Without any other guidance for making such determinations, Coleman decided to use the merit and skill criteria from Article VIII A of the CBA to select which resignation rescissions to accept.[12]

As stated above, in applying this merit and skill provision to the thirty-two National League umpires who attempted to rescind their resignations on July 27, Coleman accepted only nineteen rescissions. The thirteen

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[12] The relevant language in Article VIII A, paragraph 2, is "[a]ll umpires shall be selected or retained in the discretion of the League Presidents on the basis of merit and the skill of the umpire to perform to Major League standards." See footnote 9 for the full text of Article VIII A.

National League umpires not permitted to rescind fell into either the Darling, Davidson, or Nauert Groups.

With respect to the Darling and Nauert Groups, Coleman refused to allow them to rescind their resignations because of the limited number of unfilled positions. However, in refusing to allow the Davidson Group to rescind their resignations, Coleman articulated various reasons why he believed each member of the group lacked the merit and skill necessary to perform to Major League standards.

After reviewing Coleman's decisions to refuse reinstatement, the Arbitrator upheld him on the Davidson and Nauert groups but reversed Coleman's refusal to rescind the Darling Group's resignations. The primary basis for the ruling on the Darling Group was the Arbitrator's belief that Coleman's decision to reject their rescissions was based solely on the number of available positions, not on merit or skill, and that this ran afoul of the terms of Article VIII. Although the Arbitrator concluded that the League President had substantial discretion in employment decisions regarding the tenure of umpires, he found that Article VIII limited this discretion by requiring the League President's decision to be based on the "merit and skill" to perform to Major League standards. The Arbitrator therefore concluded that the discretion exercised by the League presidents "is not limitless," and that such decisions "must be one[s] that can be reasonably articulated and related to issues of merit and skill and not arbitrary or capricious." Opinion and Award at 90. The Arbitrator therefore concluded:

> In reviewing these explanations in light of the broad discretion given to League Presidents, it is this Arbitrator's view that Mr. Coleman must articulate an explanation that has some relationship to the merit and skill of that Umpire as well as the other

> factors that he considered. If Mr. Coleman was unable to articulate a basis, then I must conclude that he abused his discretion. The mere statement that he had to find the "numbers" required to fill the positions is an arbitrary consideration and must be overruled.

Id. (footnote omitted).

However, the Arbitrator upheld Coleman's decision to refuse to allow the Davidson Group to rescind because Coleman articulated a merit- or skill-related basis for the refusal. Finally, the Arbitrator concluded that the members of the Nauert Group did not have more than five years experience and thus were not entitled to the limited protections offered by Article VIII. Opinion and Award at 93-94.

The Leagues challenge the Arbitrator's interpretation and application of Article VIII. Specifically, the Leagues contend that the Arbitrator exceeded his authority and that the Award failed to draw its essence from the CBA in two respects. First, they read the Award as concluding that Article VIII is applicable only in situations involving the selection or retention of umpires. They also read the Award as holding that the umpires at issue in this case voluntarily resigned and were not entitled to the protections afforded by Article VIII. The Leagues therefore contend that the Arbitrator's application of the Article VIII merit and skill criteria results in a logical inconsistency.

Second, the Leagues assert that the arbitrary and capricious standard of review applied by the Arbitrator to Coleman's merit and skill determinations exceeded his authority and failed to draw its essence from the CBA. Simply stated, they allege the Arbitrator impermissibly created his own standard of review for merit and skill determinations out of whole cloth. In response, the

MLUA contends that a reviewing court should look only to the Arbitrator's Award, and not his reasoning, in determining whether it draws its essence from the CBA.

In reviewing this portion of the Award, the District Court noted its concern over the Arbitrator's determination with respect to this issue. The court nevertheless, citing *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960), and *ARCO-Polymers, Inc. v. Local 8-74,* 671 F.2d 752, 756 (3d Cir. 1982), confirmed this portion of the Award because the court believed binding precedent prevented it from vacating an award simply because of the existence of ambiguity in the Arbitrator's reasoning. Although the court noted the confusing nature of the Award, it ultimately concluded that the Arbitrator "did interpret the Agreement and did manifest fidelity to his proper role as to the National League umpires to whom he applied the merit and skill standard of Article VIII A. Slip op. at 17. The District Court further noted that, because it believed the Arbitrator had reached the proper conclusion, the reasoning which provided the basis for its conclusion was irrelevant.

We are in accord with the District Court's conclusion that it may not vacate an award based solely on an ambiguity in an arbitrator's opinion. *See Roadway Package System, Inc. v. Kayser,* 257 F.3d 287, 301 (3d Cir. 2001). However, we agree with the Leagues' assertion that the District Court erred in stating that the reasoning of the Arbitrator is entirely irrelevant. *See id.* (holding that "a court may conclude that an arbitrator exceeded his or her authority when it is obvious from the written opinion"); *Newark Morning Ledger,* 797 F.2d at 167 n.6 (holding that a court is not required "to disregard what an arbitrator says in order to justify what the arbitrator does"). Nevertheless, we do not find this error to be essential to the court's resolution of this matter. We therefore reject

the Leagues' invitation to use it as a basis for disturbing the District Court's confirmation of this portion of the Award. At bottom, the Leagues' primary contention is that the Award is inconsistent. More specifically, they contend the Arbitrator employed varying and questionable logic in first determining that Article VIII did not govern the dispute because the umpires had resigned (as opposed to being terminated), but then nevertheless requiring National League President Coleman to employ the Article VIII skill and merit criteria appropriately and consistently once he chose to invoke it.

The Leagues' argument is unpersuasive. Regardless of whether another interpretation of the CBA would make more sense, or whether we or the District Court would reach a different result if reviewing this case *de novo,* the Arbitrator's reading is logical and clearly draws its essence from the CBA.

Simply stated, the Arbitrator's interpretation of the CBA was as follows: (1) Article VIII creates minimal protections from termination for umpires with more than five years of service; (2) because the umpires at issue in this case resigned, none were entitled to the protections of Article VIII in the first instance regardless of the number of years of service; (3) even though Article VIII was not directly applicable in this case, National League President Coleman invoked it in determining which nineteen of the thirty-two final resignation rescissions to accept (a decision that essentially involved the "selection" of individuals from among the pool of resigned umpires, therebyarguably making the application of A rticle VIII appropriate); (4) once Article VIII was invoked, Coleman was required to adhere to its terms in making his determinations with respect to which rescissions to accept; (5) adhering to Article VIII meant articulating a reason that bore "some relationship to the merit

and skill of th[e] umpire," for each decision reached with respect to the thirteen umpires not permitted to rescind their letters of resignation; (6) because Coleman failed to meet this standard with respect to the Darling Group, those umpires must be reinstated; (7) because Coleman did meet this standard with respect to the Davidson Group, the grievances of those umpires were denied; (8) however, because the Nauert Group failed to qualify for this protection in the first place, the members of that group could essentially be fired at will.

Although we acknowledge that the quality of the Arbitrator's reasoning leaves something to be desired, we see no basis for judicial intervention. The Arbitrator's interpretation is discernable, coherent, and draws its essence from the CBA. Given the limited scope of our review, nothing more is required.

In closing, we cannot help but note that, at their core, many of the claims raised by both sides in this litigation amount to little more than requests for judicial review of the merits of the Award. We reiterate that such review is inimical to the public policy underlying the limited role assigned to the federal courts in the area of arbitration. *See Pennsylvania Power II,* 276 F.3d at 178 ("The rationale for the court's limited role is to ensure that the federal policy of encouraging arbitration of labor disputes is not subverted by excessive court intervention on the merits of an award."); *Remmey v. PaineWebber, Inc.*, 32 F.3d 143, 146 (4th Cir. 1994) ("Limited judicial review is necessary to encourage the use of arbitration as an alternative to formal litigation . . . . A policy favoring arbitration would mean little, of course, if arbitration were merely the prologue to prolonged litigation.").

It is beyond question that arbitration proceedings are a valuable method of dispute resolution, as they offer a means by which parties may obtain a binding result

within a short period of time and at relatively minimal expense. *See, e.g., Matteson,* 99 F.3d at 113 (noting "the congressional policy of promoting speedy, efficient, and inexpensive resolution of labor grievances"); *Remmey,* 32 F.3d at 146 (noting that "the 'twin goals of arbitration' " are " 'settling disputes efficiently and avoiding long and expensive litigation' ") (quoting *Folkways Music Publishers, Inc. v. Weiss,* 989 F.2d 108, 111 (2d Cir. 1993)). However, the possibility of receiving inconsistent or incorrect rulings without meaningful appellate review of the merits is one of the risks such parties must accept when they choose arbitration over litigation. Where, as here, an award that is questionable nevertheless falls within the broad discretion granted to arbitrators, it must be confirmed.

V. Conclusion

For the reasons stated above, we will affirm the final judgment of the District Court.

Becker, *Circuit Judge,* dissenting.

In my view, the dispute that the Arbitrator, the District Court, and the majority of this panel go to such lengths to resolve was never arbitrable in the first place. These tribunals are all agreed that the umpires resigned – a mass resignation of a significant portion of the bargaining unit. None of the umpires was terminated or discharged. As I see it, under these circumstances, there was no violation either of the basic agreement or of the first paragraph of Article VIII A that could trigger the arbitration clause. Moreover, even if one were to ignore the fact of the resignations, the matter would still not be arbitrable because as I read that clause, it confers upon

the League Presidents the unfettered ("final and binding") right to discharge an umpire with five or more years of service.[13] The language could not be clearer, and the exercise of conflating the second paragraph of Article VIII A – which deals with retention on the basis of merit or skill, and the proscription against discrimination or recrimination – with the first paragraph of Article VIII A does not carry the day because the first paragraph deals with a wholly different situation – a mass resignation.

This result is not changed by the standard of review. As I read the record, Major League Baseball agreed to submit the question of arbitrability to the arbitrator while preserving its right to challenge his determination. While this converts our normal *de novo* standard of review (of the arbitrability decision) into a deferential one, *see United Indus. Workers v. Gov't of V.I.*, 987 F.2d 162, 167-68 (3d Cir. 1993), that does not change the result because, in my opinion, the determination that the dispute was arbitrable was manifestly erroneous, and did not draw its essence from the agreement. I therefore respectfully dissent, and would vacate the judgment of the District Court and remand with directions to dismiss the complaint.

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[13] Any argument based on the five year clause has dropped out of the case because the umpires with less than five years experience have settled.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 01-2790

THE MAJOR LEAGUE UMPIRES ASSOCIATION

—v.—

THE AMERICAN LEAGUE OF
PROFESSIONAL BASEBALL CLUBS, et al.

CIVIL ACTION NO. 01-2816

OFFICE OF THE COMMISSIOP OF BASEBALL, et al.

—v.—

MAJOR LEAGUE UMPIRES ASSOCIATION, et al.

ORDER

AND NOW, this 13th day of December, 2001, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the motion of the Office of the Commissioner of Baseball, the American League of Professional Baseball Clubs and the National League of Professional Baseball Clubs for summary judgment is DENIED;

(2) the motion of the Major League Umpires Association for summary judgment is GRANTED as to Drew Coble, Greg Kosc, Gary Darling, William Hohn, Terry Tata, Frank Pulli, Larry Poncino, Joe West, Larry Vanover, Paul Nauert, Bruce Dreckman and Sam Holbrook and DENIED as to Bob Davidson, Eric Gregg, Thomas Hallion, Rich Garcia, Jim Evans, Robert Dale Ford, Mark Johnson, Ken Kaiser, Larry McCoy and Ed Hickox;

(3) the May 11, 2001 Award of Arbitrator Alan A. Symonette, Esquire ("Award") is enforced as to Drew Coble, Greg Kosc, Gary Darling, William Hohn, Terry Tata, Frank Pulli, Larry Poncino, Joe West, and Larry Vanover; and

(4) the Award is vacated as to Paul Nauert, Bruce Dreckman and Sam Holbrook and their grievances are REMANDED for further proceedings before a different arbitrator.

BY THE COURT:

HARVEY BARTLE III
J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 01-2790

THE MAJOR LEAGUE UMPIRES ASSOCIATION

—v.—

THE AMERICAN LEAGUE OF
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CIVIL ACTION NO. 01-2816

OFFICE OF THE COMMISSIONER OF BASEBALL, et al.

—v.—

MAJOR LEAGUE UMPIRES ASSOCIATION, et al.

MEMORANDUM

Bartle, J. December 13, 2001

We face the question whether an arbitrator's award missed the ball with respect to a labor dispute in the summer of 1999 over the continued employment of twenty-two major league umpires. Each party to these two lawsuits makes a pitch that all or part of the arbitrator's ruling should be scored as an error and set aside.

Before the court are motions for summary judgment brought by the Major League Umpires Association ("MLUA") and by the Office of the Commissioner of Baseball ("Commissioner"), the American League of Professional Baseball Clubs ("American League") and the National League of Professional Baseball Clubs ("National League") (all three collectively referred to as "Baseball").[1] We have jurisdiction to review the arbitrator's determination under § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185.

I.

These consolidated actions arise out of discord between the MLUA, the former exclusive bargaining agent of major league baseball umpires, and Baseball during the 1999 baseball season. It culminated in the American and National League Presidents ("League Presidents") accepting the resignations of twenty-two umpires, thirteen from the National League and nine from the American League. The MLUA contends that in an effort to wrest control over the umpires from the League Presidents, the Commissioner of Baseball Allan H. "Bud" Selig implemented various new policies in contravention of the collective bargaining agreement ("Agreement") between the MLUA and the American and National Leagues.[2] On July 15, 1999, in an effort to

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[1] The World Umpires Association ("WUA"), the successor collective bargaining agent to the MLUA, has been named as a defendant in Civil Action No. 01-2816. The WUA has filed an answer, but no summary judgment motions by or against it are pending.

[2] The Agreement was signed by the MLUA and the American and National Leagues on May 1, 1995, to be effective from January 1, 1995 through December 31, 1999.

force the leagues to negotiate with the umpires regarding the MLUA's concern over Baseball's new policies, the MLUA orchestrated the submission of resignation letters by fifty-seven of sixty-eight umpires to their respective League Presidents.[3] Each letter stated in relevant part:

> Effective September 2, 1999, I hereby resign from my employment from the [American or National] League Pursuant to Article VIII.D of the Basic Agreement between the American League of Professional Baseball Clubs, the National League of Professional Baseball Clubs and the Major League Umpires Association dated January 1, 1995. I hereby demand my voluntary termination pay.[4]

In addition to forwarding their letters of resignation, each of the fifty-seven umpires executed a personal services agreement with Professional Umpire Services, Inc. to "render services exclusively for the Corporation, and/or those Persons, customers, clients, licensees or assigns to whom the Corporation contracts to provide umpire services."

Unfortunately for the MLUA, Baseball did not view the MLUA's submission of fifty-seven resignation letters as an opportunity to negotiate. On July 22, a line-up consisting of Commissioner Selig, the League Presidents, their counsel and staffs met in Milwaukee, Wisconsin to determine what course of action to follow. It was decided to begin immediately offering umpiring positions to minor league umpires as replacements for those

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[3] Of the fifty-seven umpires submitting resignation letters, twenty-three were in the American League and thirty-four were in the National League.

[4] Each umpire with more than ten years of service demanded voluntary termination pay.

MLUA members who had tendered their resignations. Events moved quickly. By the end of the day of the Milwaukee gathering, Leonard S. Coleman, President of the National League ("Coleman"), had extended eight offers and Dr. Gene S. Budig, President of the American League ("Budig"), had tendered nine offers, all of which were accepted.

As Baseball's offensive began to hit home and the MLUA started to realize that its game plan had backfired, many of its members rescinded their resignations.[5] By July 26, the American League had filled its regular complement of thirty-two umpires through a combination of rescissions and minor league hires.[6] Budig then sent letters to the nine remaining American League umpires accepting their resignations effective September 2, 1999. In contrast, as of July 26, the National League was still short of its full staff of thirty-six umpires. A significant number of its umpires who had resigned had not yet withdrawn their resignations. On that date, Coleman hired an additional five umpires pursuant to a directive of the Commissioner. This brought the number of National League replacement hires to thirteen.

When the remaining thirty-two National League umpires finally attempted to rescind their resignations on

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[5] Before the meeting on July 22, 1999, nine umpires had already rescinded their resignation letters, seven from the American League and two from the National League. On that date, four additional American League umpires rescinded their resignations.

[6] While Article VIII B of the Agreement between the MLUA and the American and National Leagues provided each League President with the discretion to determine the size of the regular umpiring staff in his league, it required a minimum of thirty-two umpires in each league, and thirty-six umpires in the event of a two club expansion during the term of the Agreement. Since the National League expanded by two teams in 1998, its regular staff size was increased to thirty-six.

July 27, only nineteen open positions existed. Coleman proceeded to fill these positions from among this group of thirty-two. On July 29, he wrote to nineteen National League umpires accepting the withdrawal of their resignations and to the other thirteen accepting their resignations effective September 2, 1999.

As a result of the actions taken by the League Presidents, twenty-two umpires were now out. In response to their displacement, the MLUA filed a Demand for Arbitration on August 27, 1999, contending that Baseball had violated their Agreement. Three days later, the MLUA commenced an action in this court to enjoin the Leagues from dismissing the twenty-two umpires on September 2, 1999, the resignation date contained in the umpires' July 14, 1999 letters. *See Major League Umpires Ass'n v. The Am. League, et al.*, Civ. No. 99-4352 (E.D. Pa.). Judge J. Curtis Joyner, acting as emergency judge, held a hearing on September 1 on the MLUA's motion for injunctive relief. On that same day, the parties entered into a Memorandum of Understanding. The MLUA agreed to withdraw its complaint, and the parties consented to take the dispute before an arbitrator. Their Memorandum of Understanding, however, permitted any party to "raise in such arbitration whatever procedural and substantive arbitrability arguments . . . the parties may have."

The matter proceeded to a hearing before a single arbitrator. In his May 11, 2001 Opinion and Award, the arbitrator held that the Agreement authorized him to decide the dispute. He directed the reinstatement of two American League and seven National League umpires with back pay and benefits. He declined to do so as to seven umpires in the American League and six in the National League.

The contest did not end here but moved into adjudicatory extra innings. Both the MLUA and Baseball have filed the present actions seeking to vacate or modify the arbitrator's award. Not surprisingly, the MLUA seeks to have the court vacate that portion of the arbitrator's decision which failed to reinstate the thirteen umpires. It also seeks to enforce the award to the extent it was favorable. For its part, Baseball urges that the dispute was not arbitrable, but even if it were, that the arbitrator erred as a matter of law when he reinstated the nine umpires.

II.

We must first field the question of arbitrability. Whether a dispute is subject to arbitration is a matter of contract interpretation. *Trap Rock Indus., Inc. v. Local 825. Int'l Union of Operating Eng'rs,* 982 F.2d 884, 888 (3d Cir. 1992). The jurisdiction of the arbitrator is generally for the courts to decide, unless the parties clearly provide otherwise in their collective bargaining agreement. *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.,* 363 U.S. 574, 583 n.7 (1960); *Trap Rock,* 982 F.2d at 888. If the parties submit the issue of arbitrability to the arbitrator, "a court is obliged to give the arbitrator's decision regarding the arbitrability of a matter the same deference due an arbitrator's decision on the merits." *United Indus. Workers v. Gov't of the V.I.,* 987 F.2d 162, 167-68 (3d Cir. 1993) (citations omitted).

Here the parties agreed to arbitrate the dispute without prejudice to the right to challenge arbitrability in accordance with their September 1, 1999 Memorandum of Understanding. Baseball challenged arbitrability before the arbitrator, who denied its motion to dismiss. The arbitrator reiterated in his opinion and Award that "[t]he

dispute resolution language of the agreement gives me the jurisdiction to resolve disputes concerning 'claimed violations of the provisions of this agreement.' " He ruled that the dispute in issue fell within this provision.

Since Baseball had preserved its objection, it has not waived its right to judicial review of the arbitrator's jurisdiction to decide the controversy. *Pa. Power Co. v. Local Union #272 of the Int'l Bhd. of Elec. Workers,* 886 F.2d 46, 50 (3d Cir. 1989). At oral argument before the court on the pending motions for summary judgment, Baseball conceded that it was not entitled to de novo review of the arbitrator's jurisdictional decision. It agreed that his decision in this regard was subject to deference.

To determine whether the parties intended this dispute to be resolved through arbitration, we look to the Agreement they negotiated. It is undisputed that the relevant provisions were as follows:

> VIII. *STAFF, TENURE, TERMINATION, ETC.*
>
> A. *Tenure*
>
> In the event an umpire with five or more years of service is discharged by a League President, the umpire and the representative of the Association shall be entitled to an explanation of the reasons for his discharge and the umpire shall be entitled at his request to a hearing before the League President at which time the discharge shall be subject to full review and re-examination by the League President. The decision of the League President after such hearing shall be final and binding.
>
> All umpires shall be selected or retained in the discretion of the League Presidents on the basis of merit and the skill of the umpire to perform to

Major League standards. With respect to all such members of the regular staff, there shall be no discrimination or recrimination on the part of any party to this Agreement.

XV. *DISPUTE SETTLEMENT*

A. *Settlement of Disputes*

In the event of a dispute concerning a claimed violation of the provisions of this Agreement by either party thereto the matter shall be referred to the League President involved and a representative of the Association; and if an agreement is not reached by these two individuals within ten days the matter shall be referred to an arbitrator mutually agreed upon as sole neutral arbitrator to finally determine the matter.

Baseball contends that the dispute was not arbitrable under the terms of the Agreement because the first paragraph of Article VIII A provided the League Presidents with "final and binding" authority to discharge umpires. We are not persuaded. The plain wording of this part of Article VIII A simply created an optional appeal mechanism for an umpire with five or more years of service who has been discharged by a League President. That paragraph was quite explicit that an umpire with the requisite years of service "shall be entitled to an explanation of the reasons for his discharge" and "shall be entitled at his request to a hearing before the League President." Only after an umpire took advantage of these entitlements did the League President's decision become "final and binding." Nothing in Article VIII A required an umpire to pursue this remedy. An entitlement is not an obligation. For example, one is entitled to root for the home team or express an opinion on the merits of base-

ball's antitrust exemption. This does not mean that one is required to do so. In contrast, one is obligated, not entitled, to pay taxes and to obey the traffic laws. Here, umpires with five or more years of service were given an option under the Agreement which they were free to exercise or not exercise as they wished.

Baseball also argues that if we determine the hearing procedure outlined in the first paragraph of Article VIII A was optional, that provision would become meaningless because an umpire would always opt for third-party arbitration in lieu of a hearing before the very League President who had discharged him. The MLUA counters that if confronted with evidence that they made a mistake, the League Presidents, who the MLUA once considered to be honorable men, would be willing to correct their errors. Clearly, the plain language of the Agreement, for which the parties had bargained, contemplated review by the League Presidents as one method of dispute resolution for senior umpires to select. It is not for the court to question its wisdom or concern itself with the frequency of its potential use.

Our view that the arbitrator was correct in holding that the dispute was arbitrable is confirmed by the second paragraph of Article VIII A. It provided that "[a]ll umpires shall be selected or retained in the discretion of the League Presidents on the basis of merit and the skill of the umpire to perform to Major League standards." We believe that "[a]ll" meant "[a]ll," not "some" or "none." The decisions of the League Presidents concerning the continued employment of the twenty-two umpires in the summer of 1999 clearly involved the selection or retention of umpires under the Agreement.[7]

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[7] Coleman's letters also provided support for our conclusion that in deciding which rescissions of resignations to accept, Baseball was selecting or retaining umpires. In his letter accepting the rescis-

Article XV of the Agreement contained a very broad arbitration clause. It authorized an arbitrator "to finally determine" a "dispute concerning a claimed violation of the provisions of this Agreement." The current dispute between Baseball and the MLUA surely concerns a "claimed violation," that is, whether Baseball, in the summer of 1999, failed to select or retain umpires on the basis of merit and skill in violation of the second paragraph of Article VIII A of the Agreement.

The Supreme Court has held that where a collective bargaining agreement contains a broad arbitration clause, there is a presumption of arbitrability which will not be rebutted "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960) (citations omitted); *see also United Steel Workers of Am. v. Lukens Steel Co.*, 969 F.2d 1468, 1474 (3d Cir. 1992).

In an attempt to rebut this presumption of arbitrability, Baseball points to Article XV B of the Agreement. It allowed for arbitration when a League President bars an umpire from certain off-season employment or activities, but limited the arbitrator's review to "whether the order of the League President is reasonably justified in order to maintain the exemplary image and reputation of Major League umpires." Baseball argues that by specifically referring to arbitration in that section, the Agreement sought to limit the availability of arbitration in other types of disputes involving umpires. We balk at this suggestion. Article XV B simply carved out a more limited

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sions of nineteen umpires, Coleman stated, "[a]pplying the Basic Agreement criteria that I have discussed with Mr. Phillips, I have decided to select you to fill one of the remaining vacancies."

standard of review for those disputes involving off-season employment and activities. It in no way proscribed or restricted the arbitrability of the present dispute involving the selection or retention of umpires.

We hold that because the parties contracted to arbitrate disputes concerning any "claimed violation" of the Agreement, and because the current dispute concerning the selection or retention of umpires is such a "claimed violation," the arbitrator properly exercised jurisdiction. We will not strike the award on the ground of lack of arbitrability.

III.

We now turn to the level of deference to be accorded the arbitrator's award on the merits. As the Supreme Court and Third Circuit have made clear, it is not the role of the district court to vacate an arbitrator's award merely because it would have resolved the dispute differently. *Major League Baseball Players Ass'n v. Garvey*, 121 S. Ct. 1724, 1728-29 (2001); *United Transp. Union Local 1589 v. Suburban Transit Corp.*, 51 F.3d 376, 379-80 (3d Cir. 1995). Since the parties have bargained for arbitration as the means for resolving disputes between them, "[t]he federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards." *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 596 (1960). An arbitrator's authority, however, is not without its limitations. The Supreme Court has cautioned:

> an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial

> justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.

Id. at 597. The Third Circuit has explained that a labor arbitrator's award draws its essence from a collective bargaining agreement "if [its] interpretation can in any rational way be derived from the agreement." *Ludwig v. Honold Mfg. Co. v. Fletcher,* 405 F.2d 1123, 1128 (3d Cir. 1969). Therefore, we will not throw out an arbitrator's award where the arbitrator is "even arguably construing or applying the contract and acting within the scope of his authority." *E. Ass'n Coal Corp. v. United Mine Workers of Am.*, 531 U.S. 57, 62 (2000) (quoting *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987)).

In sum, we may not set aside an arbitrator's decision when he or she merely errs as a matter of law. We may do so only if his or her legal determination "evidences a manifest disregard of the law." *Tanoma Mining Co. v. Local Union No. 1269, United Mine Workers of Am.*, 896 F.2d 745, 749 (3d Cir. 1990) (citations omitted). As to the factual findings, we simply look to see if there is "some support in the record." *Id.* at 748. If this deferential standard is satisfied, our inquiry as to factual findings is concluded.

IV.

At the outset of his analysis, the arbitrator held that Baseball was entitled to hire permanent replacements due to the concerted but unprotected activity of the MLUA. This was not a manifest error of law. Article

XIX of the Agreement stated that, "[t]he Association agrees that there shall be no strike nor other concerted work stoppage during the period of this Agreement and further that it will use its best efforts to cause each umpire faithfully to carry out their obligations as employees." This clause can certainly be read to apply to the MLUA's submission of fifty-seven resignation letters. Baseball could have been stopped short without most of its umpires at the most crucial point of the year, at the end of the regular season and during the post-season playoffs.

There is considerable support in the record for the arbitrator's finding that twenty-one of the twenty-two umpires (all but umpire Drew Coble) who were the subject of the arbitration resigned their employment. Each of their July 14, 1999 letters sent to the League Presidents stated, "[e]ffective September 2, 1999, I hereby *resign* from my employment from the [National or American] League Pursuant to Article VIII.D of the Basic Agreement." (emphasis added). The fact that the umpires invoked that section of the Agreement, which was entitled "Termination Pay where Termination is by Umpire," further confirmed that they resigned of their own free will.

Contrary to MLUA's cry of foul, the arbitrator did not commit a manifest error of law when he denied the grievances of American League umpires Rich Garcia, Jim Evans, Robert Dale Ford, Mark Johnson, Ken Kaiser, Larry McCoy and Ed Hickox. By the time they had rescinded their resignations on July 27, the American League had already filled its staff complement of thirty-two umpires. No vacancies then existed. Legal precedent exists for the proposition that a rescission of a prospective resignation is not effective if the employer has relied on the anticipated resignation and changed its

position by hiring a replacement before the rescission is submitted. *See Roadway Express, Inc.*, 109 Lab. Arb. Rep. (BNA) 1064, 1066, 1069-70 (1997); *Summit Finishing Co.*, 86 Lab. Arb. Rep. (BNA) 1160, 1163-64 (1986). That was exactly what occurred here with these seven American League umpires. After receipt of their letters of resignation, the American League hired some minor league umpires and retained a number of other major league umpires who had previously revoked their resignations. It was reasonable for it to do so. The American League had no obligation to rehire umpires who withdrew their resignations after it had put together a full roster. The arbitrator properly concluded, "the decision of the President of the American League not to accept the rescissions of the remaining Umpires was not in violation of the Agreement." We uphold the arbitrator's ruling regarding these seven American League umpires.

Additionally, there was support in the record for the arbitrator's determination involving American League umpires Drew Coble and Greg Kosc. After weighing the evidence, including the credibility of witnesses and the absence of a letter of resignation, the arbitrator found that Budig erred in tagging Coble as having resigned. As the record contained support for this finding, we will enforce the decision to reinstate Coble. Furthermore, some support existed for the arbitrator's finding that Greg Kosc had not revoked the rescission of his resignation before the American League had filled all its vacancies. Consequently, we also will enforce the award to reinstate Kosc.

The National League situation, as noted above, presented a very different picture from that of the American League. Thirty-two National League umpires simultaneously revoked their resignations when nineteen slots

still remained unfilled. As a threshold matter, we recognize that at various places in his Opinion and Award the arbitrator suggested that he was not interpreting the language of the Agreement with respect to the National League umpires. Instead, the arbitrator seemed to be holding Coleman to the standard Coleman informed the MLUA he would apply without regard to the requirements of the Agreement. Utilizing what might be loosely characterized as a waiver or an estoppel theory, the arbitrator at one point stated that "the limitations set forth in Article VIII-A as it relates to merit and skill applied because the President of the National League chose to apply that standard when he had to decide which of the 19 Umpires he would retain of the 32 who rescinded their resignations on July 27."

We are certainly concerned by this and similar statements in the arbitrator's Opinion and Award, since "his award is legitimate only so long as it draws its essence from the collective bargaining agreement." *Enter. Wheel,* 363 U.S. at 597. However, the Supreme Court has admonished that "[a] mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award." *Id.* at 598. Our Court of Appeals, in a similar vein, has declared that simply because an arbitrator's opinion is "confusing and subject to various interpretations, should not cause the award to be vacated. A court should not substitute its interpretation of a contract for that of the arbitrator simply because the arbitrator's analysis is opaque." *ARCO-Polymers, Inc. v. Local 8-74,* 671 F.2d 752, 756 (3d Cir. 1982) (citation omitted).

While the arbitrator's May 11, 2001 Opinion and Award was not always a model of clarity and contained some ambiguous, confusing and opaque draftsmanship,

we conclude in the final analysis that he did interpret the Agreement and did manifest fidelity to his proper role as to the National League umpires to whom he applied the merit and skill standard of Article VIII A. *See Enter. Wheel*, 363 U.S. at 597-99. In coming to our conclusion, we are mindful that in his November 26, 1999 ruling denying Baseball's motion to dismiss, the arbitrator clearly articulated his reliance on the Agreement:

> It is my conclusion that the language of Article VIII A does give League Presidents final a [sic] binding authority to terminate umpires. However, the paragraph following that provision, places two specific limitations on that authority. First that the discretion to be exercised by the League Presidents is limited to issues concerning the "merit and skill of the umpire to perform to Major League standards." Secondly there can be "no discrimination or recrimination" in the exercise of this discretion. Accordingly, to the extent that the Presidents terminated or accepted the resignations of the 22 umpire grievants, as the case may be, the issue of whether this decision was an abuse of its [sic] discretion or was performed in a discriminatory or recriminatory manner, is subject to arbitration.

In the end, regardless of how the arbitrator reached his result, it was the Agreement's merit and skill test that he actually invoked as to all but three of the National League umpires in determining whether Coleman abused his discretion in failing to retain them. So long as the arbitrator hit upon a conclusion that is not a manifest error of law, it is not our role to question his reasoning. *See Ludwig*, 405 F.2d at 1132.

The arbitrator interpreted the Agreement as allowing the separation of a National League umpire (with the

exception of the three umpires discussed later) only if, in the proper use of his discretion, Coleman found that the umpire lacked merit and skill. The arbitrator, of course, had held that because the American League had already filled all its slots, it did not have to consider the merit and skill of the later rescinding umpires. Presumably, the difference in treatment between the seven American League umpires whose terminations the arbitrator upheld and the National League umpires came into play due to the fact that the rescission of resignations by the latter umpires occurred before the league had filled all its openings and before it had completely changed its position to its detriment. We might easily question, if our review were plenary, whether compelling the National League to hire more than its needed complement was the correct construction of the Agreement. We wonder how the arbitrator would have ruled if the National League had had only one vacancy instead of nineteen when the thirty-two umpires tendered their rescissions. Would it then have had to keep on the payroll all who had merit and skill? Nevertheless, we cannot say that the arbitrator's interpretation of the Agreement was so far afield as to constitute a manifest disregard of the law.

The arbitrator ordered the rehiring of the seven National League umpires which Coleman had found to have merit and skill. They are Gary Darling, William Hohn, Terry Tata, Frank Pulli, Larry Poncino, Joe West and Larry Vanover. Coleman had refused to retain them solely because their retention would have caused the National League to be overstaffed. Since there was at least some evidence in the record that these umpires had the merit and skill to "perform to Major League standards," no basis exists to vacate this aspect of the arbitrator's award. Our Court of Appeals has declared that

even if an arbitrator's award is dubious, "the arbitrator's contract interpretation must be irrational before a reviewing court may disturb the award." *Roberts & Schaefer Co. v. Local 1846, United Mine Workers of Am.*, 812 F.2d 883, 885 (3d Cir. 1987) (citations omitted). The effort of the arbitrator in this regard does not reach the level of irrationality and this portion of his award will be enforced.

There was also some factual support in the record for the arbitrator's decision that umpires Bob Davidson, Eric Gregg, and Thomas Hallion need not be retained because they did not satisfy the merit and skill standard of Article VIII A. Coleman testified that he had concerns about Bob Davidson's "judgment and temperament on the field." Furthermore, Coleman had declined to promote Davidson as a crew chief the year before, choosing several umpires more junior to Davidson for the available positions. As to Eric Gregg, Coleman stated that he was concerned about his ability "to keep up and follow some of the . . . umpiring patterns, that were required on the field." Gregg was also suspended for a few weeks during the summer of 1999. Finally, Coleman expressed concern regarding Thomas Hallion's temperament and testified that Hallion had been suspended for a few games during the summer of 1999. The MLUA's effort to overturn the arbitrator's award in this regard is wide of the plate.

The arbitrator took an entirely different stance with regard to National League umpires Paul Nauert, Bruce Dreckman and Sam Holbrook. In contrast to his reasoning regarding the other National League umpires, the arbitrator ruled that the merit and skill test under Article VIII A was inapplicable to these three persons merely because they each had fewer than five years of service. Consequently Coleman could properly discharge them.

Unlike the case of the more senior umpires, the arbitrator ruled that "the tenure of these three individuals was subject to the unfettered discretion of the League President." Their merit and skill, the timing of the withdrawals of their resignations, and the League's detrimental reliance were all simply irrelevant.

The arbitrator's conclusion, and the thought process that accompanied it, have absolutely no basis in either the Agreement or the factual record. As we noted above, the second paragraph of Article VIII A of the Agreement stated that *"[a]ll* umpires shall be selected or retained in the discretion of the League Presidents on the basis of merit and the skill of the umpire to perform to Major League standards." (emphasis added). The language could not be clearer. Without question, all umpires meant all umpires, including those with less than five years of service. The arbitrator may not pick off these three umpires and treat them as outside the protection of the Agreement.

In an attempt to justify his conclusion that Coleman had "unfettered discretion" not to retain Nauert, Dreckman, and Holbrook, the arbitrator relied on the first paragraph of Article VIII A. As we explained previously, that paragraph simply provided an optional remedy for discharged umpires with five or more years of service. If they chose that remedy, they were entitled to a hearing before the League President, after which his decision "shall be final and binding." The arbitrator inexplicably read that paragraph's benefit for umpires with five or more years of experience to mean that umpires with fewer years of service could be fired at will by the League President. This construction is not possible in light of the second paragraph of Article VIII A protecting all umpires who have merit and skill.

The arbitrator's award as to those three umpires was completely off base. It did not draw its essence from the Agreement. *Enter. Wheel,* 363 U.S. at 597. The arbitrator committed a manifest error of law. *See Tanoma,* 896 F.3d at 749. His interpretation cannot "in *any rational way* be derived from the agreement, viewed in the light of its language, its context, and any other indicia of the parties' intention." *Ludwig,* 405 F.2d at 1128 (emphasis added). Accordingly, we will vacate the arbitrator's award with regard to umpires Paul Nauert, Bruce Dreckman and Sam Holbrook.

V.

We have considered the other arguments of the parties urging us to set aside the arbitrator's award. They are without merit and need no further elaboration.

VI.

Having concluded that the arbitrator made the wrong call in denying the grievances of Paul Nauert, Bruce Dreckman and Sam Holbrook, we must now signal the appropriate remedy. The Supreme Court has explained that when an arbitrator makes erroneous factual determinations that are without any support in the record, the appropriate remedy is "to remand the case for further arbitration proceedings." *Major League Baseball Players Ass'n v. Garvey,* 121 S. Ct. 1724, 1729 (2001). While *Garvey* involved a review of an arbitrator's factual assessments, the instant action compels us to determine the appropriate remedy where an arbitrator has made a manifest error of law and disregarded the plain language of a collective bargaining agreement. Although *Garvey* does not specifically address this type of situation, we

find that its reasoning is applicable to cases involving manifest errors of law as well as factual errors. In its decision in *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 40-41 n.10 (1987), the Court stated that:

> as a rule the court must not foreclose further proceedings by settling the merits according to its own judgment of the appropriate result, since that step would improperly substitute a judicial determination for the arbitrator's decision that the parties bargained for in the collective-bargaining agreement.

We cannot remand for further proceedings before the same arbitrator because his authority is exhausted. He is *functus officio. See Teamsters Local 312 v. Matlack, Inc.*, 118 F.3d 985, 991-92 (3d Cir. 1997). The doctrine of *functus officio* provides that when "arbitrators have executed their award and declared their decision they are functus officio and have no power or authority to proceed further." *Id.* at 991. (citation omitted). In *Matlack*, the Third Circuit articulated three narrow exceptions to the *functus officio* doctrine:

> (1) an arbitrator can correct a mistake which is apparent on the face of his award; (2) where the award does not adjudicate an issue which has been submitted, then as to such issue the arbitrator has not exhausted his function and it remains open to him for subsequent determination; and (3) where the award, although seemingly complete, leaves doubt whether the submission has been fully executed, an ambiguity arises which the arbitrator is entitled to clarify.

Id. at 991-92 (citations omitted). Our remand falls outside of these three narrowly circumscribed exceptions.

Therefore, we will remand only that portion of the arbitrator's award denying the grievances of Paul Nauert, Bruce Dreckman and Sam Holbrook for further proceedings before another arbitrator.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 02-1103, 02-1124, and 02-1276

MAJOR LEAGUE UMPIRES ASSOCIATION,

AppellantlCross-Appellee

—v.—

AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS; NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS; OFFICE OF THE COMMISSIONER OF MAJOR LEAGUE BASEBALL,

Appellees/Cross-Appellants

(U.S. District Court for the Eastern District of PA:
Nos. 01-cv-02790 and 01-cv-02816)

Before: SCIRICA, *Chief Judge*,
SLOVITER, NYGAARD, ROTH, AMBRO, FUENTES, SMITH,
CHERTOFF, FISHER and BECKER*, *Circuit Judges*

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* Honorable Edward R. Becker, Senior Third Circuit Judges, vote limited to panel rehearing only.

ORDER

The petition for rehearing *en banc* filed by the Appellant/Cross-Appellee in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *en banc*, the petition for rehearing is denied.

By the Court,

/s/ JANE R. ROTH
Circuit Judge

Dated: June 2, 2004

ARL/cc: PCC; NHA; MSB; MED; HLG; SRW

Howard L. Ganz, Esq.
Neil H. Abramson, Esq.
Proskauer Rose
1585 Broadway
New York, NY 10036

BEFORE THE
AMERICAN ARBITRATION ASSOCIATION

Case No. 14 300 1395 99

In the Matter of the Arbitration Between:

The Major League Umpires' Association

and

The National League of Professional Baseball Clubs &
The American League of Professional Baseball Clubs

Grievance: Termination by employer of 13 NL and 9 AL Umpires in violation of the Collective Bargaining Agreement

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OPINION AND AWARD

Before:

Alan A. Symonette, Esq.
Impartial Arbitrator

Appearances:

The Major League Umpires Association

Thomas W. Jennings, Esq.
Stephen J. Holroyd, Esq.
Patrick Campbell, Esq.

The National and American Leagues of Professional Baseball Clubs

Howard L. Ganz, Esq.
Neil H. Abramson, Esq.
Daniel R. Halem, Esq.
Andrew S. Goodstadt, Esq.
Paul V. Mifsud, Jr., Esq.

Subject:

Resignation, Rescission, Discrimination, Merit and Skill, Management Discretion, Contract Interpretation, Credibility, Evidence.

Date of Demand: August 27, 1999

Statement of the Award:

Based upon the evidence presented, I find that the Umpires who were members of the MLUA bargaining unit had indeed resigned and the Leagues did not violate the collective bargaining agreement when it decided to hire replacement Umpires as a consequence of those submitted resignations. Furthermore, the Leagues did not violate the collective bargaining agreement with respect to those American League Umpires who rescinded their resignation letters after the staff of the American League had been filled. However, the grievances are sustained with respect to American League Umpires Drew Coble and Greg Kosc in that there was insufficient evidence to show that, in Mr. Coble's case, that he had intended to resign his position, and in Mr. Kosc's case, that he intended to withdraw his previous rescission of his resignation.

Finally, although the National League President had substantial discretion in determining which resignations to accept with respect to the remaining Umpires who had rescinded their resignations as of July 27, 1999, I find that the National League President abused his discretion in that he failed to articulate a reason to accept resignations based upon the criteria he established with respect to the following Umpires: Gary Darling, Bill Hohn, Terry Tata, Frank Pulli, Larry Poncino, Joseph West and Larry Vanover. These umpires, along with Drew Coble and Greg Kosc shall be reinstated to their full positions and shall be paid full back pay, and benefits. All other grievances are denied.

It is noted that prior to the submission of this Award, Major League Baseball has entered into a collective bargaining relationship with the World Umpires Association and has reached a new collective bargaining agreement. All back pay and benefits owed the grievants whose grievances were sustained shall be in accordance with the terms and conditions set forth in the new agreement.

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INTRODUCTION

This matter concerns a dispute between the Association, the Major League Umpires Association (MLUA) and the National League of Professional Baseball Clubs and the American League of Professional Baseball Clubs (collectively referred to as "the Leagues"). At all times material herein, the MLUA and the Leagues have been parties to a series of collective bargaining agreements covering a bargaining unit consisting of all individuals serving as Umpires of Major League Baseball games played in both leagues. The last and most recent of these agreements was effective from January 1, 1995 through December 31, 1999.

The circumstances that resulted in this arbitration arose out of the events surrounding the mass resignation of most of the bargaining unit in July 1999, the subsequent rescission of a number of resignations by individual umpires, the hiring of permanent replacements, and the Leagues' acceptance of certain resignations after the remainder of the bargaining unit attempted to withdraw their resignations. This resulted in the separation of 22 Umpires who are the grievants in this matter.

The Association, for a number of reasons, contend that the resignations were caused by a number of actions orchestrated by the Commissioner of Major League Baseball which were intended to commandeer the managerial rights of the Presidents of the American and the National Leagues during the term of the collective bargaining agreement. The Association further insists that the Leagues' failure to accept the rescissions of all Umpire resignations was contrary to the language of the collective bargaining agreement and was discriminatory, arbitrary and capricious.

Major League Baseball, on the other hand, contends that the Umpires/Grievants quit their employment and were not terminated under the collective bargaining agreement and that the Presidents of the American and National Leagues were acting within their managerial prerogative when they hired replacement Umpires. This action was based upon the Association's actions that clearly indicated that its members were resigning from their employment with Major League Baseball. Finally, the Leagues contend that the decisions made by the League Presidents concerning which rescissions to accept were not subject to review through arbitration, and, if so, did not constitute an abuse of discretion, nor were these decisions arbitrary and capricious.

BACKGROUND FACTS

At all times herein, the National League President was Mr. Leonard Coleman, and the American League President was Dr. Gene Budig. The Commissioner of Baseball was Allan H. "Bud" Selig. The MLUA President was Major League Umpire Gerald Crawford. The Association counsel was Richard G. Phillips.

The parties in all the agreements with the MULA were the Presidents of the National and the American Leagues. The agreement designated each President as the person directly responsible for the supervision of Umpires within their League as well as the administration of the agreement as it applied to the Umpires in each league.

According to the evidence presented at the hearing, in December 1998, the Commissioner and his staff engaged in a number of strategic planning discussions concerning a possible reorganization Major League Baseball. Part of these discussions included the contemplation of the elimination of the management structure within the

leagues and the centralization of the supervision of the Major League Umpires under the jurisdiction of the Commissioner's Office. According to the MLUA, the apparent involvement of the Commissioner's Office in matters within the direct supervision of Umpires appeared to be an attempt by the Commissioner's Office to replace the supervisory authority of the League Presidents during the term of their agreement with the Leagues.

The MLUA viewed the role of the Commissioner with respect to its relationship with baseball as one limited to chiefly ceremonial roles. From time to time the Commissioner served as an impartial arbiter of disputes that surfaced between the Leagues and the MLUA that may affect the interests of the game. Beginning in January 1999, the MLUA became aware of the substance of the discussions within Commissioner's Office that the Commissioner was interested in becoming more directly involved in the supervision, evaluation and possible discipline of Major League Umpires. The Commissioner's Office explained that this was needed to facilitate greater accountability among the umpiring staff and to insure more consistent officiating between the Leagues. The method by which the MLUA became aware of these discussions is the subject of some dispute. Nevertheless, such knowledge caused significant concern within the leadership of the Association.

As a result, a meeting was arranged between the leaders of the Association and members of the Commissioner's office and was held on January 7, 1999 in the offices of Association Counsel, Richard G. Phillips. Those present at the meeting included Mr. Phillips, Patrick C. Campbell, Jr., an attorney with Mr. Phillips' law firm, and Mr. Crawford, on behalf of the Association. Attending on behalf of the Leagues was Mr. Rob Manfred, Executive Vice President of Labor and Human

Resources, and Mr. Richard "Sandy" Alderson, Executive Vice President of Baseball Operations.

According to the attendees, Mr. Philips reminded Mr. Alderson that it had a basic agreement with the American and the National Leagues, and they did not understand the need for any involvement by the Commissioner's Office in matters that have been exclusively within the jurisdiction of the collective bargaining agreement. Mr. Alderson, stated that the Commissioner wanted to take a more active role in dealings with Umpires, and while there were no discussions of specifics, Mr. Alderson informed the Association that he would be the lead person in collective bargaining for a new agreement set to become effective in January 2000. After that meeting, the Association and the Commissioner's office became embroiled in a number of controversies in which the MLUA contended were examples of the Commissioner's escalating interference in the relationship between the MLUA and the Leagues.

The first issue concerned the interpretation of the strike zone, specifically the evaluation of whether umpires were calling the balls and strikes in a consistent manner. In February 19, 1999, Mr. Alderson forwarded a memorandum to the League Presidents informing them that the official rules would be more strictly enforced as it applied to the interpretation of the strike zone. This memorandum was forwarded to individual umpires as an attachment from the League Presidents.

The MLUA contended that Commissioner Selig did not have the right or jurisdiction under the collective bargaining agreement to influence the judgment of Umpires in their interpretation of the strike zone. Any evaluation of performance in this area remained exclusively within the jurisdiction of the League Presidents. Furthermore, any change in the interpretation of the

strike zone could only be implemented through an amendment to the official playing rules and subject to negotiations between.the League Presidents and the MLUA.

The second dispute occurred soon thereafter. In March 1999 the Commissioner promoted the use of Umpire training through the use of a computer simulator. The League Presidents were urged to invite Umpires to attend a number of informational meetings in which the simulator would be demonstrated and the umpires asked to share their views of the device. According to the evidence presented, American League Umpires were invited to attend the meetings upon the request of Dr. Budig. Many, if not most of the American League Umpires attended. Mr. Coleman, on the other hand, chose to give the Umpires of the National League the option of attending the meeting but did not encourage their participation. Rather, he expressed the belief that the simulator would be used to evaluate and ultimately discipline umpires. The Umpires of the National League did not attend any informational meetings. The Association also objected because they were not consulted and the matter should have been left up to the negotiations between it and the League Presidents.

Approximately a week later, Mr. Alderson became involved in a controversy involving National League Umpire Bruce Froemming, who had allegedly requested autographs from Mark McGwire of the St. Louis Cardinals. Mr. Alderson expressed to Mr. Coleman that the solicitation of the autographs was contrary to Mr. Coleman's memorandum concerning collection of memorabilia and was not in the best interests of Major League Baseball. Mr. Alderson asked Mr. Coleman to conduct an investigation of the incident and submit a report to the Commissioner's Office soon as possible. According to

the MLUA, this was another example of the Commissioner's insertion into matters that were exclusively within the jurisdiction of the collective bargaining agreement between the League Presidents and the MLUA.

At approximately the same time, baseball began discussions with officials of the Republic of Cuba for the purpose of holding exhibition games between the Cuban National team and the Baltimore Orioles. According to the MLUA, the use of Major League Umpires in certain special exhibition games had traditionally been the subject of separate negotiations between the League Presidents, and the MLUA. The parties would negotiate specific compensation and other working conditions for the game(s). However, Mr. Crawford stated that in this instance, he was informed that Major League Umpires were going to work a game in Cuba, not from the American League, or the Commissioner's Office but rather through the local newspapers. Mr. Crawford instructed Mr. Phillips to investigate the circumstances in which Major League Umpires would be used in the game. Mr. Phillips attempted to negotiate terms for the service of umpires, however, no agreement was reached. Therefore, the represented umpires did not participate in the exhibition game in Cuba.

Soon after the culmination of the disagreement over the assignment of Major League Umpires to the exhibition game in Cuba, another controversy arose concerning the method used to monitor compliance with the February 19th strike zone directive. Each club general manager was instructed by Mr. Alderson to chart pitches, in order to evaluate compliance with the strike zone directive. According to the MLUA, the collective bargaining agreement contained specific language that dealt with the process to be used for evaluating umpires. This process did not involve the use of club officials to mon-

itor performance but rather involved independent evaluators selected with the input of the MLUA. Furthermore, the Commissioner's Office did not attempt to meet or discuss these changes with the Association.

According to the MLUA, these incidents occurring within such a short period of time continued to increase its concern regarding the role of the League Presidents with respect to its obligations to the current collective bargaining agreement. As a result, Mr. Phillips attempted to arrange meetings with Mr. Coleman and Dr. Budig. One such meeting had been held in March 1999 but was attended only by Mr. Coleman. According to Mr. Phillips, he and Mr. Coleman discussed the issues that had been percolating between the parties, including the use of the simulator and the strike zone and the evaluation and charting of pitches. The MLUA specifically asked Mr. Coleman for direction concerning what it should be doing regarding the procedure to enforce the terms of the collective bargaining agreement. According to Mr. Phillips, Mr. Coleman simply responded that he should "call Bud."

Mr. Phillips stated after that meeting that he attempted on several occasions to meet and discuss these problems with Mr. Selig. According to Mr. Phillips, Mr. Selig avoided meeting to discuss any MLUA matter with him. This resulted in an increased amount of frustration within the membership of the MLUA that continued to intensify through the first half of the baseball season. This was exacerbated by the impact of a confrontation between two amateur umpires and a minor league umpiring crew. Two amateur umpires were not allowed to use the facility used by the minor league umpires. According to the evidence presented, the amateur umpires left an angry letter in the umpires locker room of the minor league stadium that was not only derogatory to the

umpires but also contained several anti-union statements. The Association soon found out that these umpires were going to be selected to serve as evaluators of minor league umpires. Questioning the objectivity of these two men, the Association attempted to appeal to the Commissioner's office but was unsuccessful.

Traditionally, Major League Baseball celebrated the season's halfway point through an All Star break, which occurred from July 12 through 14, 1999. For umpires not assigned to work the All Star Game, this served as a brief respite from work and travel. However, it was common knowledge, according to the MLUA, that many of the Umpires were very frustrated over the treatment of their collective bargaining relationship with the Leagues by the Commissioner's Office. They were so frustrated that many were considering engaging in a collective job action during the second half of the season. This frustration was made clear in a conference call held with a number of the members. As a result, the Board of directors of the MLUA met. Therefore, in late June of 1999, a meeting of the Board of directors of the MLUA was held to determine a course of action. Those who attended the meeting included Mr. Phillips and Mr. Crawford, but also, Bruce Froemming, Steve Ripley, Terry Tata, Richie Garcia, Tim Welke, Larry Young and Dale Scott.

According to Mr. Crawford, there was substantial sentiment within the membership that they should go on strike before the end of the season. The membership felt that their collective bargaining agreement had been abandoned and that it had no one within the management structure of Major League Baseball to discuss its issues. This feeling persisted even though many of the issues involved, including the strike zone and the charting of pitches, had been grieved and was awaiting binding arbitration.

Even though the sentiment for a strike was strong, it was also the feeling of the Board that a strike would harm the MLUA. Therefore, the Board, devised another strategy though which it would offer an alternative, namely that all of the Umpires would submit their resignations to be effective seven weeks after its submission in order to force the Leagues to negotiate its issues with the Association. In addition to developing the resignation strategy, the Association instructed its attorneys to set up a corporation entitled Professional Umpires Services, Inc. Articles of incorporation were drafted and filed and Personal Services Agreements between the new corporation and individual umpires were created. The meeting was called for July 14, 1999 in Philadelphia.

On July 5, 1999 Mr. Phillips and Mr. Crawford mailed the following letter to the membership:

> Dear Member:
>
> It is most regrettable that the relationship between the Major League umpires and Major League Baseball has degenerated to an all time low. It is painfully obvious that Baseball evidences little or no respect for its umpires and their enormous contributions to the Game. It is equally obvious that Baseball is engaging in deliberate acts of provocation in order to pander to misguided media pundits and the Players' Association.
>
> There is a new regime in Baseball, which is determined to establish a new culture. They have adopted a philosophy which holds that the systematic termination of low rated umpires is the way to improve umpiring.
>
> They have no regard for the Collective Bargaining Agreement, the Official Rules of Baseball or the

Major League Agreement. NO one person can change the strike zone to fit his won personal fancy.

They refused to negotiate with our Association over the Cuba games, preferring to go without Major League umpires. That act was a naked and bold effort to send a message that they believe that the Game can go on without it's (sic) umpires.

They assigned pedestrian amateurs to chart every pitch in every ballpark in America. This was meant to be more than just a casual affront.

They hired six amateur umpires (at least two of whom are scabs), to scout and supervise minor league umpires. One of their scab supervisors even co-authored a letter to minor league umpires threatening them with release and referring to professional umpires as "horse-shit." (A copy of the letter is enclosed for your review).

It is unfortunate that you can not (sic) look to your respective League president for support, as they both are apparently willing to surrender not only their own positions but your positions as well. They both have a responsibility to you that they have abrogated.

At a meeting of the Board of Directors on June 30, 1999 the Board voted unanimously to authorize Jerry Crawford to take a strike vote. An informal poll indicates that so far the sentiments for a job action have been overwhelming.

You can look only to yourselves and your collective inner strength as we fight to maintain the respect we have earned through many years of not

only our own service but the service of those who have gone before us.

Baseball has embarked on a course that is designed to humiliate, divide, embarrass and otherwise denigrate a group of people who have always stood tall. We will continue to stand tall with our heads erect.

We are planning an important meeting over the All Star break in Philadelphia to discuss your future. You will be notified of the exact location. This meeting is mandatory for all members and we look forward to seeing you there.

Very truly yours,

Major League Umpires' Association

BY: Richard G. Phillips

AND: Gerald J. Crawford

On July 14, 1999, the vast majority of Umpires met in Philadelphia. As planned, the Board of Directors submitted a proposal in which the Umpires would submit letters In stating that they are resigning, effective on September 2, 1999, and also requesting termination pay as provided within the collective bargaining agreement. The proposal was adopted.

On July 15, 1999, 57 of 68 Major League umpires submitted resignation letter to their respective league presidents.[1] The body of each letter stated as follows:

"Effective September 5, 1999, I hereby resign from my employment from the American League Pursuant to

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[1] 23 American League Umpires and 34 National League Umpires.

Article VIII.D of the Basic Agreement between the American League of Professional Baseball Clubs, the National League of Professional Baseball Clubs and the Major League Umpires Association dated January 1, 1995. I hereby demand my voluntary termination pay."[2]

In addition to signing the letters of resignation, each umpire also executed a personal services agreement in which the umpire agreed to "render services exclusively for the Corporation, and/or those Persona, customers, clients, licensees or assigns to whom the Corporation contracts to provide umpire services."

As anticipated, the resignations received coverage in the news media. Mr. Phillips, as the spokesperson for the Association made several statements in the press indicating that they seriously intended to resign. Mr. Alderson was also sought out for comment. When asked he was quoted as stating: "This is either a threat to be ignored or an offer to be accepted."

At the same time, Commissioner Selig sent a memorandum to all Major League Baseball Employees stating the following:

> "Yesterday afternoon Richie Phillips, the head of the Major League Umpires' Association, held a press conference and announced that fifty-seven of his members intended to resign on or before September 2, 1999. This threat presents no real concern with respect to our ability to operate. We are in the process of carefully analyzing the practical and legal implications of the threat. In the meantime, there should be no communications with Richie Phillips or any umpire on this topic. Moreover, there

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[2] Each umpire with more than 10 years of service demanded termination pay.

should be no public comment on this topic by any official from the Commissioner's office"

There was very little apparent activity between July 16 when the news broke and July 22, 1999. However, during that period nine umpires, seven from the American League and two from the National League submitted rescissions of their resignations. Four additional American League Umpires rescinded their resignations on July 22.

On that date, the League Presidents, the Commissioner and their respective counsel and staffs met in Milwaukee, Wisconsin to determine what action they would take. Even though the manner in which the decision was reached is the subject of some dispute, the group decided to begin offering employment permanent replacements on that day.[3] By the end of that day, the National League had extended eight offers of permanent employment while the American League made offers to 12 minor league umpires. All of the offers were accepted.

Immediately after the Milwaukee meeting, Mr. Phillips engaged in several conversations with Mr. Coleman and his counsel Ted Kheel. According to Mr. Phillips he indicated to Coleman that the Commissioner had "won" and he was willing to "surrender." Mr. Kheel testified on the other hand that he told Phillips that he was not in a posi-

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[3] As explained in the arguments below the Association asserted that there were participants in the meeting that advocated that the umpires be given a clear deadline to rescind but that was overruled by the Commissioner as a means to "bust" the Association. Furthermore there were a number of telephone calls made by supervisors of the American League encouraging rescissions while National League supervisors were encouraging solidarity. Finally the Association asserted that there were a number of conversations between the Commissioner and Association dissidents intent on forming an insurgent organization.

tion to take a surrender and at least 44 umpires were still resigned from their employment.

On July 23, 1999 the Association filed a Complaint for Declaratory Judgment in the U.S. District Court for the Eastern District of Pennsylvania. The complaint sought a declaration of rights of the Association and Leagues with respect to the possibility that the Leagues may refuse to honor the Agreement's post termination benefits provisions and granting the Association the right to enforce the collection of those benefits. According to Baseball, this was viewed as an attempt by the Association to enforce their position that its membership had resigned.

By July 26, 1999 the American league through a combination of those who had not resigned, those who had resigned and rescinded prior to that date and permanent replacements had returned to its regular staff compliment. Therefore Dr. Budig sent a letter to the remaining umpires accepting their resignations. Dr. Budig's letter stated the following:

> "On July 15, 1999, I received from your union, the Major League Umpires' Association, a letter from you dated July 14, 1999, resigning from your employment as an umpire with the American League. I deeply regret that you decided to take part in this concerted resignation plan instigated by the Major League Umpire's Association. However, you have left me with no choice but to accept your resignation and to fill the vacancy that your resignation has created along with the other vacancies that were created by this mass resignation strategy. The hiring process is now complete. The American League has hired a permanent employee to fill the vacancy created by your resignation and each resignation sub-

mitted by an American League umpire that was not rescinded.

Thank you for your service to the American League and I personally wish you the best in your future endeavors."

Those who received letters were: Gregory Kosc, Richard Garcia, James Evans, Ed Hickox, Mark Johnson, Robert Ford, Kenneth Kaiser, and Drew Coble.

In the National League, by July 26 there had not been one additional resignation. Therefore, the Commissioner ordered Mr. Coleman to hire five additional permanent replacements.

That same day, the Association sought a temporary restraining order preventing the leagues from accepting the resignations of the umpires. The following day, July 27 after lengthy conversations with Judge Edmund Ludwig, the Association decided to rescind all the remaining resignations. Later that day the Association faxed to the leagues the following letter: "The following National [or American] League Umpires, without prejudice, withdraw their notices of their intent to resign on September 2, 1999."

The letter had no impact on those whose resignations had been "accepted" by the American League. However, in the National League, it had hired 13 permanent replacements and had received two rescissions. Therefore it had 19 vacancies in which the National League President had to fill with the remaining 32 umpires. According to the testimony provided, Mr. Kheel and Mr. Coleman offered the Association the opportunity to "bargain" over the procedure in which the remaining positions could be filled. Mr. Phillips stated that the only accepted procedure would be to create a seniority list including those who had been hired by the National

League and to select those to remain based on seniority. Coleman and Kheel rejected this response.

According to Mr. Coleman's testimony he decided to use a criteria based upon the qualifications of "merit and skill" as stated in Article VIII of the Collective Bargaining Agreement. Coleman stated that his determination was based upon a number of factors including "technical ability; attitude; temperament; the ability to instruct, teach, supervisee and lead others; and the desirability of having a balanced staff which to Coleman meant a staff consisting of long-service umpires, mid-career umpires, and junior umpires, as well as one that, to the extent possible, reflected considerations of racial and ethnic diversity." With consultation with Mr. Kheel and his supervisor Mr. Paul Runge, Mr. Coleman accepted the rescissions of 19 umpires. He accepted the resignations of the following 13 umpires: Gary Darling, Bob Davidson, Bruce Drekman, Eric Gregg, Tom Hallion, Bill Holm, Sam Holbrook, Larry Boncino, Frank Pulli, Terry Tata, Larry Vanover, Joe West and Paul Nauert. Mr. Coleman then sent letters to the 13 umpires advising him of his decision.

The Association engaged in subsequent litigation to overturn the severences.[4] However, on August 27, 1999, the Association filed a Demand for Arbitration pursuant to the Voluntary Labor Arbitration Rules of the American Arbitration Association. The issue in dispute as stated by the Association concerned the "termination by the Employer of 13 NL Umpires and 9 AL Umpires in violation of the collective bargaining agreement." The undersigned arbitrator was selected by the parties from a panel submitted by the Association. The hearing con-

[4] This included a Complaint in Federal Court and an Unfair Labor Practice with the National Labor Relations Board.

sisted of 17 days of oral testimony over the course of the following year resulting in over 3600 transcript pages, 2000 pages of exhibits as well as length post hearing and reply briefs. The hearing was closed on December 28, 2000.

Throughout the hearing the parties were represented by counsel and each had the opportunity to challenge the evidence submitted by the opposing side.

STATEMENT OF THE ISSUE TO BE DECIDED

Based upon the statement of the issue in the Demand for Arbitration as well as the context of the testimony and arguments provided, the issue to be decided could be best described as follows: Did the Employer violate the Collective Bargaining Agreement when it severed the employment of the twenty two grievants? If so, what shall the remedy be?

PERTINENT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

Article VIII. STAFF, TENURE, TERMINATION, ETC.

A. Tenure

In the event an umpire with five or more years of service is discharged by a League President, the umpire and the representative of the Association shall be entitled to an explanation of the reasons for his discharge and the umpire shall be entitled at his request to a hearing before the League President at which time the discharge shall be subject to full review and re-examination by the League President.

The decision of the League President after such hearing shall be final and binding.

All umpires shall be selected or retained in the discretion of the League Presidents on the basis of merit and the skill of the umpire to perform to Major League standards. With respect to all such members of the regular staff, there shall be no discrimination or recrimination on the part of any party to this Agreement.

B. Umpiring Staff

The size of the regular umpiring staff of each League shall bee determined from time to time by the League President at his discretion, provided that during the term of this Agreement the League staffs shall not be less than thirty-two (32) umpires. In the event either League expands by two clubs during the term of this Agreement, the expanding League's staff shall be increased to not less than thirty-six (36) umpires.

C. Termination Pay where Termination is by the League

In the event an umpire's employment is terminated by the Leagues, he will receive the following termination pay: (1) If released during the period beginning January 1 through July 14, the umpire will receive his full salary for the balance of the year and no further payments under this paragraph; (2) if released during the period beginning July 15 through December 3, the umpire will receive-A his full salary for the balance of the year and (b) an umpire with less than five (5) years of service will

receive fifty percent (50%) of his pay at the rate payable to him for the year he would have worked and an umpire with five (5) or more years of service will receive eighty percent (80%) of his pay at the rate payable to him for the year suceeeding the year in which he was terminated. Notwithstanding the foregoing, no umpire who is terminated by the Leagues shall be entitled to any payment hereunder if his termination is due to serious misconduct or acts of moral turpitude.

All payments provided for under Section C(2) (b) shall be made no sooner than January 1, nor later than January 10, if the year succeeding the year in which the umpire's employment is terminated.

D. Termination Pay where Termination is by Umpire

In the event an umpire's employment is terminated during the term of this Agreement by such umpire's own action, then he will receive termination pay in the amount specified by years of service in the schedule set forth below:

Years of Service	1995, 1996 and 1997	1998 and 1999
10	125,000	150,000
11	150,000	175,000
12	175,000	200,000
13	200,000	225,000
14	225,000	250,000
15	250,000	275,000
16	275,000	300,000

17	300,000	325,000
18	325,000	350,000
19	350,000	375,000
20	375,000	400,000

The parties hereto agree that the payments provided for by this Article VIII(D) are not to be deemed to be retirement benefits. All payments provided for under this Section D shall be made no sooner than January 1, nor later than January 10, of the year succeeding the year in which the umpire's employment status terminates.

XV. DISPUTE SETTLEMENT

A. Settlement of Disputes

In the event of a dispute concerning a claimed violation of the provisions of this Agreement by either party thereto the matter shall be referred to the League President involved and a representative of the Association; and if an agreement is not reached by these two individuals within ten days, the matter shall be referred to an arbitrator mutually agreed upon as sole neutral arbitrator to finally determine the matter. In the event the parties are unable to mutually agree upon the appointment of the arbitrator, they jointly shall request the American Arbitration Association labor panel located in Philadelphia, Pennsylvania, to furnish them a list of professional arbitrators.

The parties shall alternate in striking names from the list until only one remains, who shall be deemed appointed as arbitrator. Arbitration proceedings

before the arbitrator shall be conducted in accordance with the Labor Arbitration Rules of the American Arbitration Association.

XVI. ITEMS PREVIOUSLY DEALT WITH BY UNIFORM UMPIRE'S CONTRACT

C. Each umpire shall perform his services for his League with diligence and fidelity, keep himself in first class physical condition, obey and perform such rules and regulations as his League may require and pledges himself to the American and Canadian public and the Leagues to conform to high standards of personal conduct and maintain the integrity of the international game of baseball.

* * *

G. Subject to the provisions of this Agreement, each umpire agrees to accept, abide by and comply with his League's Constitution, the Major League Agreement and Rules, Official Playing Rules, Umpire Instructions and all amendments thereto which may be hereafter adopted, and such regulations as his League President may establish pursuant thereto, all decisions and discipline of his League President and all decisions and discipline of the Commissioner pursuant thereto.

XIX. NO STRIKE

The Association agrees that there shall be no strike nor other concerted work stoppage during the period of this Agreement and further that it will use its best efforts to cause each umpire faithfully to carry out their obligations as employees.

SUMMARY OF THE ARGUMENTS OF THE PARTIES

The parties have submitted extensive arguments not only within the notes of testimony but also in the form of post-hearing briefs and reply briefs. This summary will also extensively discuss each party's views of the evidence presented.

Arguments and Evidence of the Major League Umpires Association

The Association asserted that since its inception through the end of 1999, baseball operated through two Leagues with distinct constitutions that provided for separate presidents, administrative staffs, budgets as well as separate umpiring staffs. All supervision, including the payment of wages, the determination of hours and working conditions also came under the each League President. This included extensive control of the appointment, discharge and disciplining of Umpires. This authority was recognized by and reflected in the basic agreement. Even though there were times during which there was conflict, the relationship between the League Presidents and the Association could be described as one of trust and mutual respect.

On the other hand, the Association argued that the Commissioner and his staff were never considered to be part of the basic agreement. Rather, prior to 1999, the Commissioner's role was viewed as being chiefly ceremonial. The Commissioner had limited involvement in labor issues involving umpires. The Association asserted for example, that prior to 1999 the current Commissioner, Bud Selig, was very reluctant to get involved in issues involving umpires. The only occasion that the Association recalls in which Commissioner Selig

became involved concerned the discipline of then Baltimore Orioles player, Sandy Alomar, in the latter part of the 1996 Baseball season for spiting on an umpire. The American League President suspended Mr. Alomar for five games, and that suspension was not to be served until the following season. The MLUA contended that the suspension should have been immediate and substantially more severe, and thus, the Association asked Commissioner Selig to become involved. Instead, Commissioner Selig demurred, stating he could not get involved in the matter because he could not superimpose his judgment over that of the League President. According to the Association, Commissioner Selig agreed with the Association that the discipline was too lax, but stated that he lacked the authority to change it.

The Association contended that this relationship began to change beginning in the fall of 1998. These changes precipitated the dispute that is before this Arbitrator. According to the Association, the movement by the Commissioner to "take over" the administration of Umpires was motivated by a perceived lack of accountability on the part of Umpires and the declining public perception.

This was embodied by two controversial events during the divisional series between the Cleveland Indians and the New York Yankees. In one instance, Umpire Joe Brinkman ejected the manager and starting pitcher early in the game. The second incident resulted from a call by Umpire Ted Hendry on a play at first base in which many in the media believed involved interference.

In response to the controversy and to questions regarding umpire integrity and accountability, Commissioner Selig vowed to the public to assume responsibility for Major League Umpiring and to resolve the "problem" with the Umpires. At approximately the same time, the

Commissioner hired Sandy Alderson, Robert Manfred and Robert DuPuy to join his staff. Soon thereafter, the Commissioner and other staff members met in Orlando, FL to discuss and establish certain strategic goals regarding the fixture governance of baseball.

According to the Association, one of the major issues discussed in that meeting concerned the design and implementation of a plan to transfer control of the Umpires from the Presidents of the two Leagues to the Commissioner's Office. In discussing the viability of such a plan, the staff researched the current collective bargaining agreement. That research disclosed that the terms of that agreement prevented any meaningful movement by the Commissioner to centralize the supervision of Umpires. Regardless of this representation, the Association contended that the Commissioner's Office had every intention of taking over the supervision of Umpires and wrestle control from the League Presidents in 1999.

The Association based this argument upon certain memoranda that were drafted by Robert DuPuy. These memoranda were provided to the Association through sources that had not been disclosed. Counsel for the Leagues strenuously objected to the submission of this memorandum stating that Mr. DuPuy was acting in his capacity as general counsel to Major League Baseball, and therefore, these documents were subject to the attorney-client privilege. The Association maintained that based upon these documents, the goal of the plan concocted in Orlando was to leave the League Presidents in titular control of the Umpires for the 1999 Baseball season so as to create an appearance that there is no violation of the basic agreement. The ultimate goal was to place the actual control of Umpire matters with the Commissioner through the direction of Sandy Alderson

in his capacity as Executive Vice President of Baseball Operations.

The Association initially raised objections to the plan when Mr. Phillips learned of the effort in November 1998. According to Mr. Phillips, Leonard Coleman also voiced objections asserting that the plan was in violation of his employment agreement with the Major League Baseball.

The Association, even though it did not disclose its knowledge of the fall meetings, met with Mr. Alderson in Mr. Phillips' office in January 1999. In that meeting, according to the Association, Mr. Alderson stated that he planned to impose a "new accountability on the Umpires" but not while the current agreement was in effect. This view was also expressed in a New York Times article that was, published on January 8, 1999. The Association contended however that Mr. Alderson lied in that meeting. Rather, the Commissioner's Office had every intention of seizing power from the National League during the 1999 season.

In support of this, the Association produced another memorandum from Mr. DuPuy, again over the strenuous objection of the Leagues, in which the Presidents were told that Mr. Alderson was the designee of the Commissioner responsible for coordinating the Umpire program. Furthermore, employment decisions regarding umpires could not be made without full consultation with Mr. Alderson. According to the Association, "The two League Presidents who had enjoyed exclusive control over the Umpires for decades had been effectively reduced to little more than figure heads whose very action was subject to the approval of Alderson."

This plot became exposed over the course of 1999 through a number of controversies. The first controversy raised by the Association concerned a memorandum

issued by Mr. Alderson, which, it asserted, changed the strike zone without consulting with the Official Playing Rules Committee, the League Presidents or the MLUA. According to Mr. Phillips, he had heard about this from a reporter while in a hotel in Florida. Mr. Coleman was also present in the hotel where he was attending a social outing that was also attended by Phillips. Mr. Phillips questioned Mr. Coleman, who stated that he did not know of the memorandum. Mr. Coleman subsequently testified at the arbitration hearing that he did not know anything of the proposed changes of the strike zone but nevertheless disagreed with the mandate but was apparently overruled by the Commissioner's Office. This resulted in a subsequent meeting between Phillips and Coleman in which Mr. Coleman allegedly told the Association that he was powerless to do anything about the change in the strike zone.

Subsequently, in March 1999, the Umpires received a memorandum advising them of the development of a simulator to increase the accuracy and efficiency of calls on the field. They were invited to come to Florida to review the simulator and to comment on it. According to the Association, Mr. Coleman told Mr. Phillips that Mr. Alderson did not solicit his input on this matter; that it was not a beneficial program but would be used to fire Umpires. Therefore, he was not going to instruct National League Umpires to participate.

In response to questions raised by the Association, Mr. Alderson stated that the program would go forward with or without League input. In the American League, Dr. Budig encouraged his American League Umpires to attend and participate. As a result, many American League Umpires attended. According to the Association, the net effect of Mr. Alderson's effort resulted in a lack of a unified policy by the Leagues and the total exclu-

sion of the Association from the process. This resulted in the creation of further confusion and chaos among the members of the bargaining unit.

The long-established and respectful relationship between the Association and the League Presidents was dealt further blows by subsequent actions orchestrated by Mr. Alderson and the Commissioner. For example, the Leagues failed to negotiate with the Association concerning the assignment of Umpires to work an exhibition game between. the Cuban national team and the Baltimore Orioles. As a result the game was officiated by non-Major League Umpires.

According to the Association, the basic agreement also contained an evaluation system in which the Leagues employed full-time evaluators with MLUA input in that selection process. The evaluators were to present their evaluations to the League Presidents which would subsequently be turned over to the MLUA. However, on April 8, 1999, Mr. Alderson sent a memorandum to the general managers of the baseball clubs asking them to chart balls and strikes in order to monitor compliance with the newly altered strike zone. In issuing such a memorandum, the Association contended that, again, the Commissioner was usurping the authority of the League Presidents without negotiating in violation of the basic agreement changes with the MLUA.

Finally, the relationship between the MLUA and the Commissioner's Office suffered a final blow as a result of a confrontation between two amateur umpires Dave Yeast and John Bible and an AAA Umpire crew. Apparently in response to what was felt to be disrespectful treatment by the AAA Umpire crew, Mr. Yeast wrote a note slandering those Umpires in a tone that exhibited substantial anti-union sentiment. Mr. Yeast and Mr.

Bible served as replacement Umpires during the prior strike.

In May of 1999, as part of a Minor League evaluation program, the Commissioner's Office announced that rather than continue to use retired Major League Umpires as evaluators with MLUA input, that they would use amateur Umpires, including Mr. Yeast and Mr. Bible. The Association objected because it thought that Yeast and Bible were biased, given their attitude toward these Minor League Umpires, and was vehemently anti-union. As as result, Association President Crawford spoke to Ralph Nelson, President and Chief Executive Officer of Baseball, and Mr. Phillips talked to Mr. Beeston, Vice President in charge of umpires. Both Nelson and Beeston were very sympathetic to the Association's position and subsequently approached Alderson. However, even though Alderson exhibited some sympathy to the Association's concerns, he continued to retain them.

At the same time, the Association had been in regular conversations with Mr. Coleman. It was made clear during the testimony that Mr. Coleman and Mr. Phillips enjoyed a close friendship. They often went on outings and played golf together and talked about League business. During one of those instances, the Union became aware that Mr. Coleman had retained an attorney to deal with what Mr. Coleman testified to as "intrusions by Mr. Alderson on my turf, which I wasn't going to put up with." The attorney was essentially retained to negotiate Mr. Coleman's severance from Baseball. In support of this position, the Association received a copy of a letter from Mr. Coleman to Mr. Selig, which it submitted in the hearing as evidence. It stated the following in part:

> "I am writing to expand on the concerns that I previously discussed with you about your decision

to transfer supervision and control of the Umpires to the Coirunissioner's Office from the League offices. These concerns were heightened from recent memos from your designee, Sandy Alderson, that direct me to report to him on the disciplining of Umpires direct me on the nature and scope of my handling of such discipline, and even purport to instruct me on the judgments I should make concerning what is or is not in the interest of the National League.

My contract with the National League provides that during my tenure I "shall perform the duties of president as specified in the Constitution of the National League and shall act as Chief Executive Officer of the League." The National League constitution specifically provides that the National League President "shall have exclusive control over appointment, discharge and disciplining of Umpires." Your directive to centralize control and supervision of the Umpires in the Commissioner's Office as well as Mr. Alderson's implementation of that directive are in conflict with Article 5.3-A. As a result, the League is no longer in compliance with the plain language of my contract which provides that I am to have exclusive control of appointment, discharge and disciplining of Umpires."

According to the Association, the conflict between Coleman and the Commissioner, including what the Association asserted were similar conflicts involving Dr. Budig, affected their judgment to control the growing crisis that resulted in the submission of the "notices of intent to resign" from the members of the MLUA. This deteriorating relationship between the League Presidents and the Commissioner's Office caused the League Presidents to abrogate their responsibility and authority

under the basic agreement to the Commissioner. This, according to the Association, gutted the central relationship that supported the viability of the collective bargaining agreement.

The collective bargaining agreement clearly intended to vest supervisory authority over Umpires with the League Presidents. Article VIII of the agreement gives the League Presidents the ultimate authority to discharge Umpires, hold hearings on discipline and that those decisions were deemed to be final and binding. The League Presidents also had substantial discretion in the selection and retention of umpires and the determination of the size of the umpiring staff

According to the Association, the desperate situation that was created by the incidents in the first half of 1999 would have resulted in a "torrent of grievances in protest of those violations." However, the Association asserted that a number of factors forced the Association to seek a course of action outside of the provisions of the collective bargaining agreement. It maintained that the Umpires were in the last year of an agreement, and that given the time needed to resolve the grievances through arbitration, there would be a new agreement. The grievances, even if they were filed and arbitrated, could not be remedied through the awarding of damages and the passage of time would render any outcome moot with respect to the collective bargaining relationship. Furthermore, the Association contended that since the League Presidents were an integral part of the dispute resolution process and had been essentially removed from that process by the Commissioner's Office, the grievance procedure had become meaningless.

The other avenue that had been traditionally used by the Association, that of appealing to the Commissioner, was no longer available. Therefore, according to the

Association, "The Umpires had no one to turn to and nowhere to go to help remedy their problems." As a result, Association President Crawford called a meeting to discuss what was a high level of frustration within the bargaining unit. Therefore, via a teleconference on June 30, 1999, the Association's Board expressed the frustration with baseball's lack of recognition of its contractual obligations. The Board was frustrated and angered by the feeling that the Leagues and their Presidents had abandoned the basic agreement. The Association stated that, "the League Presidents had become, by midsummer, pathetic shadows of themselves with both men desperately negotiating their premature departure from their pain." This, according to the Association, left Commissioner Selig as the new "Emperor" of Baseball.

Accordingly, Crawford scheduled a meeting of the Umpires for July 14, 1999 in Philadelphia. Such a meeting was unprecedented, indicating how far the relationship had deteriorated.

Mr. Phillips testified that he felt it was important that he advise certain members of Baseball of the upcoming meeting and its purpose. Therefore, he advised Mr. Beeston, Mr. Kheel and Mr. Coleman of the meeting, but received no response.

According to the testimony of Mr. Phillips and Mr. Crawford, it was recognized by both of them that engaging in a strike during the term of a contract that contained a no-strike clause posed some very significant legal problems. They also considered engaging in a strike to protest what they felt to be unfair labor practices. The National Labor Relations Board would investigate the allegations, but the results of that investigation would be uncertain and would guarantee protracted litigation.

They decided to allow the membership to express an opinion regarding a strike; then if there was still support for a work stoppage among the attendees, Mr. Phillips and Mr. Crawford would propose a less risky alternative strategy that would, in their view, provide more protection to the members and a better chance to avoid any work stoppage; thus, the resignation strategy was developed.

The strategy required the Umpires to submit individually signed notices stating that they intend to resign their employment at a future date. The strategy also provided for the establishment of a corporation entitled Professional Umpire Services Inc., which would then provide a legal vehicle to employ the resigned Umpires and to offer their services back to the Leagues. According to the Association, the corporation was created in order to enhance the perception that the Umpires were serious about their threats to resign. The corporations also provided Association leadership with an option that, in the event the resignation date approached and there was no progress in negotiations, they could carry out the Association's strategy and at the same time provide Baseball with a source of Umpire services. This, according to the Association, provided a safeguard that would not have been available if Association membership engaged in a strike.

The strategy would also activate the voluntary termination provisions of the agreement that would require a payment of approximately $15 million dollars by the leagues in the event the resignations took effect. This, according to the Association, would provide an incentive for Baseball to try to negotiate with the MLUA.

The strategy, therefore, had two basic objectives; first, it was considered to be a "symbolic gesture" of so many Umpires in order to call attention to their exasperation

over their deteriorating relationship with the Leagues. Second, it would provide seven weeks of advance warning of a threatened resignation date, thus affording ample opportunity for the Association and Baseball to resolve their differences. This would be considered a cooling off period.

According to Mr. Crawford, as the July 14 meeting began, sentiment for a strike remained strong if not unanimous among the membership attending. Thus, in keeping with the plan, Mr. Phillips presented the alternative resignation strategy followed by a discussion. Subsequently there was a motion made on the floor for a strike that was eventually rejected in favor of the resignation strategy. According to the Association, each member was given the choice to join in the resignation strategy or refrain. Individuals who refrained were not subject to any intra-Association discipline. This included Mr. Brinkman and Mr. Hirschbeck, who, according to the Association, were the point individuals involved in the eventual decertification of the MLUA and the certification of the World Umpires Association.

The Association strongly emphasized that no Umpire ever intended to resign. Both Mr. Crawford and Rich Garcia testified that they did not intend to walk away from their careers but only to get the attention of Baseball. Another indication of the Association's intent never to bring the resignations into effect involved the incorporation of Professional Umpire Services Inc. The articles of incorporation were filed with the Commonwealth of Pennsylvania on July 9, 1999. Yet, while these articles were filed, other steps that were necessary to activate the corporation were never taken. There was no meeting of shareholders and no bylaws were adopted. In the meeting, the Umpires signed personal services agreements with the corporation, but the officers of the corporation

never countersigned them. Furthermore, when the Umpires began rescinding their resignations, the corporation never attempted to enforce those agreements.

The individually signed resignation letters were forwarded by fax to the League Presidents on July 15, 1999. The Association argued in its brief that the submission of the signed letters were a notice of an intent to resign effective at a future date; therefore, unless there was any "bona fide detriment" that would be caused by the resignations, the Umpires were entitled to withdraw their notices any time prior to the effective date. According to the Association, an employee's resignation standing alone was a non-event. In order to be effective, the resignation must be accompanied-by an overt act. There must be a legitimate detrimental reliance on the resignation by the employer to nullify the employee's right to withdraw his resignation. Therefore, any replacement of an employee must be accompanied by a legitimate reason based on the necessity to continue operations and to substantiate or justify the replacement of the position. However, if the purpose of the hiring of those replacements is to chill any Association support or activity, such a hiring is, per se, illegal.

Given this standard, the Association contended that during the week of July 15 to July 22, Baseball did nothing to indicate that there was a legitimate need to replace Umpires. Nevertheless, consistent with their position taken since 1998 in Orlando, the Commissioner's Office took control of the situation and prohibited anyone associated with Baseball from commenting on the matter. The only statement made by Baseball during this period was made by Sandy Alderson immediately after the resignations were filed. And at the same time the Commissioner sent a memorandum to the club owners and

employees stating that "The threat presents no real concern with respect to our ability to operate."

Even though Baseball had felt that the resignations were a violation of the collective bargaining agreement and were tantamount to a wildcat strike, it never sought any injunctive relief through the courts to prevent the occurrence of what was perceived to be the violation of its rights under the basic agreement.

While there was no overt activity on the part of Baseball, the Association asserted that it covertly set out to undermine the Umpires' confidence in the MLUA. According to the Association, Baseball then began a campaign to secure the rescission of umpire resignations within the American League by directing its staff to contact and speak directly to select Umpires to encourage them to rescind. Thus, American League supervisor, Marty Springstead contacted people to encourage immediate rescissions and also called Umpire Drew Coble to congratulate him in the fact that he had not attended the July 14th meeting. As these calls began to spread; so the rescissions of the American League Umpires began to arrive in the American League President's office.

Umpire Terry Tschida testified that he spoke with Springstead and supervisor, Phil Janssen, and was told that he had only a few hours remaining to rescind his resignation. This warning was passed to all other AL Umpires, with the exception of those who were clearly supportive of the Association. This included Umpire Richie Garcia, who, according to his testimony, never received such a phone call.

The Association also asserted that in contacting officials with the American League, Phillips spoke with American League Vice President Derek Irwin, who told him that if the Umpires would cease their opposition to the centralization of supervisory control the Association

would realize gains in upcoming negotiations. Furthermore, Irwin warned Phillips that the Commissioner wanted the Umpires to terminate their relationship with him as counsel to the Association.

While the American League supervisors were encouraging Umpires to rescind, the National League supervisors were calling their Umpires to applaud their action and to encourage them to hold out. They condemned the rescissions tendered by American League Umpires and encouraged continued resistance to the Commissioner's takeover. As an example, the Association presented the voice mail message from supervisor Harry Wendelstedt for Ed Hickox encouraging him to "hang tough". Wendelstedt also called Gary Darling, who followed the advice of the supervisor, and as a result, became one of the grievants in this case.

Paul Runge, the National League chief supervisor, also stated that he was appalled at the American League Umpires who were rescinding and encouraged them to stick together. In fact, Mr. Crawford testified that he was not aware of any National League Umpire who received a call encouraging him to rescind.

During this period, Association counsel, Patrick Campbell, became concerned about a news article by columnist Hal Bodley of *USA Today* in which it was implied that a deadline had been set as an ultimatum for the Umpires. As a result, Mr. Campbell called Mr. Irwin with whom he had, at the time, a close relationship, and asked him about the deadline. Mr. Irwin, according to Mr. Campbell, denied that there was a deadline. Mr. Campbell then asked Mr. Irwin that if a deadline would ever be created, to let him know. Irwin promised that he would communicate this to him when a deadline becomes known.

The Association maintained that based upon the scarcity of activity during the first week after the submission of the resignation notices, it was clear that there was no urgency to replace Umpires on the part of Baseball. It had over six weeks to resolve the controversy. Therefore, given Commissioner Selig's statement that the resignations would not affect Baseball operations, there had been no other overt facts that would change the Commissioner's mind with respect to the impact of resignations on Baseball.

Nevertheless, the discriminatory calls placed by supervisors were succeeding. Therefore, by July 22, the American League had a staff of at least 20 Umpires who did not resign or who had rescinded their resignations. The American League only needed 21 Umpires at that time to work the postseason and fewer than that number of Umpires to work any critical games.

The National League, on the other hand, had only one Umpire fail to resign, and two had rescinded. Therefore, the National League knew that there was a substantial solidarity among its umpires. Nevertheless, these resignations were having little effect on baseball operations. The Umpires were continuing to work games, and Commissioner Selig was apparently willing to sit out the events and let them take their course and let the rescissions continue to come in.

According to the Association, by July 22, 1999 the resignation strategy had basically collapsed, and there was no evidence that the Association possessed the ability to reinvigorate its strategy or carry it through to fruition. Even though the apparent impact of the threat was negligible, the Commissioner called a meeting of his staff along with the staffs of the American and National League, to his office in Milwaukee. Given the diminishing strength of the strategy, the only reason why

this meeting was called was to implement a joint strategy in order to, essentially, "break the Union."

The Association asserted that based upon the description of the meeting provided to the Association by Derek Irwin the Commissioner was determined to use the strategy as a tool to destroy the MLUA. According to these admissions, a portion of the group, including Mr. Coleman and Dr. Budig, argued that there remained six weeks until the resignations would become effective and thus there was time for a peaceful negotiated solution. They advocated setting a specific deadline for Umpires to rescind their specific resignations. The members of the Commissioner's staff, specifically Mr. Alderson, Mr. Manfred and Counsel Frank Coonelly advised the Commissioner that the Leagues should immediately start hiring permanent replacements. Thus, they would be in a position to dictate to the Association the terms under which certain Umpires could return. Thus by encouraging Umpires to rescind their resignations, this would frighten those remaining to rescind their resignations.

Commissioner Selig eventually adopted the strategy advocated by his staff and ordered the League Presidents to begin hiring replacement Umpires over their strong objection.

Even though these decisions were made at the July 22 meeting, the Association maintained that there was no evidence that there was any operational need for the replacements. The evidence presented by certain League witnesses support this view. According to the Association, Mr. Coleman admitted that he was forced to act by no one other than Mr. Selig. Indeed, when he began hiring the first eight replacement Umpires, he did not intend for these replacements would replace any of his current National League Umpires. Rather, the whole

motivation for the action was based upon "a desire," as stated by Alderson, "to harm Umpires."

The Association also stated that there was no need to act so precipitously because there was a replacement work force of Minor League Umpires available at all times. The common practice within the Leagues had always been have Minor League Baseball Umpires available to replace regular Umpires on an immediate basis if Umpires were on vacation or became ill. There was also an additional pool of amateur Umpires available. Thus, Baseball could have easily waited for several weeks before calling up any replacement Umpires.

The Association further contended that its description of Baseball's anti-union strategy as of July 22nd was further supported by the admissions of Derek Irwin. In this regard, the Association provided extensive testimony recounting a conversation it had with Mr. Irwin over cocktails and dinner on January 4, 2000. According to the Association, a number of the grievants, along with Pat Campbell and Mr. Phillips, were in New York for a National Labor Relations Board hearing concerning objections to the election involving the WUA.

By that time, Mr. Irwin was no longer an employee of Major League Baseball. Responding to Mr. Campbell's invitation, he and Mr. Irwin met at the Four Seasons Hotel where they were joined by a number of Umpires and Mr. Phillips. The group moved from the Four Seasons to Gallagher's, a local restaurant. According to the testimony of the Association witnesses to the conversation, Mr. Irwin stated that there were two "camps" at the July 22nd meeting; those he described as "hawks" and "doves." The hawks advocated the hard line approach of hiring replacements while the doves wanted to issue a deadline to rescind. The hard line position prevailed because Commissioner Selig was sympathetic to

it. The moderates felt that there was no business justification for it since support for the tactic was diminishing. After the Commissioner made his decision, Mr. Irwin stated that Dr. Budig became so disgusted with the plan of action, that he grabbed him to leave, saying that the hiring strategy was "the vilest thing" he had ever been asked to be part of. The Commissioner ordered him to remain.

The Association maintained that these admissions were credible, despite Mr. Irwin's subsequent testimony in which he denied making these statements. Regardless of these denials, Mr. Irwin did not deny that the dinner occurred and that these items were discussed. He claimed that he was a silent bystander in the conversation. Yet, two days after that meeting, the Association made these disclosures part of the record at the January 6 NLRB hearings. These disclosures included the anticipated resignation of Dr. Budig. This was something that was unknown prior to that time. Indeed, Dr. Budig resigned on January 7.

The Association also maintained that the four Association witnesses, including Mr. Campbell, Mr. Coble, Mr. Crawford and Mr. Phillips, also substantiated these statements. In addtion, the disclosures of Mr. Irwin regarding the description of what occurred in Milwaukee was verified by Mr. Coleman's testimony. It was also supported, to the extent that Mr. Alderson stated that the purpose of hiring replacement Umpires was to foreclose the rescissions.

The Association concluded that the decision to hire the replacements well in advance of any likely need for them and the overwhelming evidence that, given the feeble status of the union's action, there would never have been a need for replacements establishes that the hiring

were nothing more than a device employed by Baseball to retaliate against the Association and its supporters.

The Association further asserted that, through admissions of Mr. Irwin and the testimony of Mr. Coleman, after Commissioner Selig had determined that replacements would be hired, he had the Presidents sent to adjoining rooms in the Commissioner's office and were instructed to begin hiring replacement Umpires. Mr. Kheel and Mr. Coleman initially contacted Mr. Runge to discuss whom they were going to hire. The first replacement was Mr. Runge's son. This process took to a substantial about of time.

Mr. Alderson checked into the room some time later to determine how Mr. Kheel and Mr. Coleman were progressing with the telephone calls. After hearing that there had been one replacement hired, Mr. Alderson began berating Mr. Coleman for failing to follow the Commissioner's direction. According to one description, the two men nearly came to blows. Mr. Alderson then ordered them back into the room and ordered them to continue hiring replacement Umpires.

Mr. Coleman testified that, by the end of the session, he had hired about five Umpires and offered them employment as permanent replacements. Then on orders of the Commissioner he hired three more. Therefore, by the end of the day, the National League had hired eight new Umpires and the American League had hired nine Umpires.

According to the Association, these replacements were hired without any consideration of their "merit and skill." One example, according to the Association, was the hiring of an Umpire named Anthony Randazzo. According to the Association, he had never worked in the Major Leagues and was not even known to Mr. Runge, but was recommended by both Mr. Alderson and

the owner of the Arizona Diamondbacks and thus was contacted and hired.

After the Milwaukee meeting, Mr. Phillips was informed by Mr. Runge of the hiring of the replacement Umpires. According to the testimony of Mr. Phillips, Mr. Runge told him that the National League needed an additional five Umpires, so there was no need for concern and that everything would work itself out. Therefore, because of the lack of any warning, neither Phillips nor Mr. Crawford was concerned about the impact of the July 22nd hiring. However, by the middle of the following day, it was evident to the Association that the resignations were not having their intended result and the program was collapsing. Thus, Mr. Crawford authorized Mr. Phillips to contact Baseball and communicate the Association's desire to "surrender."

In following through with that authorization, Mr. Phillips testified that he contacted Mr. Kheel and told him that the Association was prepared to surrender. However, Mr. Kheel stated that he was not in the position to accept surrender, but said that he would inform Commissioner Selig of their conversation. Mr. Phillips stated that he would call Mr. Selig as well and try to reach him at his office. However, the Commissioner was out of his office and did not return Mr. Phillips' call. According to the Association, given the Commissioner's mindset regarding the Association, the Commissioner did not intend to return that call.

Since Mr. Phillips did not reach Mr. Selig, he called Mr. Coleman and asked him to serve as an intermediary with Selig and that he had heard from Eugene Orza, counsel for the Major League Baseball Players Association, who had asked if the rumor that Major League Baseball was preparing to accept the resignations of the Umpires was true. Mr. Coleman said that the rumor was

not accurate and assured Mr. Phillips that "No one is going to take out my guys."

The next day, July 24th, Phillips and Coleman spoke again. This time, he was informed by Commissioner Selig had "intended to turn the heat up" and that if Phillips had an "exit strategy," he might want to consider it.

Even though it was clear that the Association was willing to negotiate an end to the situation, Mr. Coleman testified that Mr. DuPuy later instructed him that the Commissioner had decided that the National League was to hire 5 additional replacements to bring the total number of replacements to 13. Mr. Coleman testified that he felt that the 5 additional Umpires were not necessary but he had no option. According to the Association, given the Commissioner's decision to hire more Umpires, in light of the Association's willingness to surrender, only "unmitigated vindictiveness and recrimination" was the sole motivating factor. Any indication that Baseball was in a detrimental situation in which it felt it could not operate due to the resignations was artificial and self-induced.

On July 26, the Association initiated legal action in Federal Court in order to, according to the Association, clarify the legal effect of Baseball's efforts to terminate Umpires. According to the Association, Judge Ludwig attempted to mediate the issue; however, since he was unable to reach a resolution, he suggested to the Association that it rescind the resignations without prejudice. Major League Baseball was thus notified of the rescissions of the remaining Umpires on July 27th. However, on July 26th, 1999, a letter was sent over the signature of Dr. Budig stating that the resignations of the remaining American League Umpires were accepted and that they had already filled the vacancies that the resigna-

tions had created, along with other vacancies created by the mass resignation strategy.

With respect to the National League Mr. Kheel notified Mr. Phillips that there were fewer spaces available than returning umpires. At that time, 32 Umpires had rescinded their resignations as of July 27th; however, there remained only 19 openings in the National League; therefore, 13 Umpires would be released. Thus there would be another meeting to determine which 13 National League Umpires would be terminated.

Mr. Kheel testified that he had invited Mr. Phillips to negotiate a procedure to determine which of the remaining Umpires would be retained. Mr. Phillips testified that lie would not participate in the termination process but stated that the decision on what Umpires to sever should be based upon seniority and the pool of Umpires to be considered should include all Umpires, even those that did not resign and those who rescinded and those who were hired from the Minor Leagues and amateur ranks as replacement Umpires. Mr. Kheel stated that those individuals who had not rescinded prior to July 27th or who had just become members of the bargaining unit would not be considered for severance.

In a subsequent conversation Mr. Kheel informed Mr. Phillips that after further discussion with Mr. Coleman, he had decided to use the "skill and merit" criteria contained within the collective bargaining agreement. According to the Association, by insulating entire classes of the bargaining unit from the process, Mr. Coleman was discriminating against the remaining National League bargaining unit members in violation of the agreement. The Association maintained that merit and skill language in Article VIII-A specifically applied to all members of the bargaining unit, and that there was nothing in the language of the agreement that served to exclude any mem-

ber of that bargaining unit from consideration. The contract therefore mandates that the consideration of retention based on merit and skill should be applied to all Umpires regardless of whether they were hired as replacements, rescinded their resignations or never resigned at all.

With respect to the determination of the relative skill and merit of the affected umpires, the Association then stated that there is no dispute that the parties had previously agreed upon an evaluation process and that that process was memorialized in the series of side letters agreements within the collective bargaining agreement. As a result, evaluations over a period of four years had been compiled in the National League and three years in the American League. This provided an objective basis upon which Umpires were ranked based on their skill and merit.

By July 28, 1999, Baseball had 22 more Umpires than it had positions 9 in the American League and 13 in the National League. Many of those Umpires who had replaced these 22 Umpires were Minor League Umpires with little or no Major League experience. Therefore, the National League violated the collective bargaining agreement to the extent that it failed to consider the merit and skill of these Minor League Umpires as compared to the 22 grievants in its consideration. If it had done so, it was clear that the 22 grievants would have been retained.

With regard to this contention, Mr. Kheel testified that the application of merit and skill was a unique circumstance given the unusual situation of a mass resignation. The Association in response maintained that the plain meaning of the language did not permit any additional interpretation based on the special circumstances of the situation. As far as the Association was concerned, as of

July 28, 1999, the new hires were members of the bargaining unit and should have been included in the comparison of merit and skill under Article VIII. Thus selected members of the bargaining unit from the reach of the word "all" and therefore from consideration of the decision to retain Umpires, Baseball violated its contractual obligations as set forth in the collective bargaining agreement.

The Association further contended that even in applying the criteria of skill and merit to the remaining Umpires, the National League used extraneous factors that were not related to the criteria whatsoever. The Association stated that the criterion of skill and merit is included within a contractual rating process in which the Association was given a voice in the selection of evaluators. The forms prepared by the evaluators over at least three years were detailed and reflect every aspect of the Umpires' skill and performance. In the addition to the evaluation system, the parties agreed that the selection of Umpires to officiate at special events, including the All Star Game and the postseason playoff series, would be based on merit.

This generated a background of performance that should have been considered in determining the relative skill and merit of Umpires. According to the Association, as demonstrated clearly by his own testimony, Mr. Coleman failed to consider any of these relevant factors in deciding which Umpires to retain.

The Association initially argued that Mr. Coleman's testimony contradicted a prior declaration in which he stated that he had applied the criteria of skill and merit. However, at the hearing he stated that he did not have to apply skill and merit but only in its broadest terms with the aim to maintain a "balanced staff of senior Umpires, sort of mid career Umpires and younger Umpires."

The Association argued that the decision making process that Mr. Coleman utilized, as stated in his testimony was a "blatantly unlawful travesty of justice. It not only reinstated race and age discrimination as acceptable employment criteria but also failed to bear even the remotest reflection of terminated Umpires' actual skill and merit".

Specifically, the Association asserted that Coleman's concept of balance and diversity were nothing more than euphemisms for the "coarsest forms of age and race discrimination. Umpires who were at the very bottom of the contractual evaluation system were retained because they were Hispanic or Black while others were retained because they were young with a large family and a new house, while extremely senior Umpires were summarily terminated because they made the mistake of telling Mr. Coleman that they were contemplating retirement after more than a quarter century of service.

According to the Association, Mr. Coleman also testified that some of these Umpires were terminated because he felt that they were so qualified that Mr. Alderson would ultimately rehire them. In others, he was unable to cite any objective reason for selecting those Umpires but for the fact that he needed the numbers. With some Umpires, specifically Eric Gregg and Joe West, the decision was based on judgment and temperament issues that had been resolved several years ago. With respect to Joe Darling, Mr. Coleman relied on an incident involving the Arizona Diamondbacks in which Mr. Darling was accused of using profanity and denied it when questioned. This was based on an incident that occurred on the field a number a couple of years before, yet Mr. Darling was never told of the incident or its significance.

The Association maintains that in none of the decisions did Mr. Coleman rely on the contractual evaluations. If one compares the rankings based on the evaluations with the actual decisions of Mr. Coleman, the evidence will indicate, according to the Association, that Mr. Coleman terminated Umpires rated in 1999 as being 5th, 7th, 10th and 12th while retaining the two lowest rated Umpires, Mr. Ripley and Mr. Williams. Moreover, every Umpire selected for termination, according to the Association, had played in special events during the previous three years. This was certainly a violation of the appropriate application of skill and merit.

The Association also asserted that in the American League, Dr. Budig, as "controlled" by the Commissioner, simply replaced bargaining unit members on a "first come, first serve" basis. According to the Association, this tactic had no basis in the contract. The American League was obligated to consider skill and merit. Therefore, it failed to consider any outstanding Umpires such as the League's top rated Umpire, Mr. Richie Garcia.

According to the Association, the only motivating factors used to sever umpires was discrimination and recrimination. These factors were specifically prohibited by the collective bargaining agreement. When this language was negotiated the parties agreed that the League Presidents, in making decisions to retain umpires, would refrain from engaging in "discrimination and recrimination." This prohibition would be applicable to all decisions in which selections had to be made within the bargaining unit.

It was intended to ensure that all Umpires, including replacements, crossovers and Association supporters would receive the same treatment in the event that there had to be a staff reduction. If such a circumstance

occurred, the parties agreed that only two factors would be considered in decisions to retain all Umpires, merit and skill.

The Association contended that Baseball violated this non-discriminatory language by issuing selective warning calls to Umpires during the time it was offering employment to permanent replacements. As indicated above, even though many American League Umpires were warned of the League's action, Mr. Garcia received no such calls. He would have been warned but for the fact that he was clearly a Association supporter. At the same time, National League Umpires who were the foundation of Association support, did not receive warning calls but were called and told to continue to support the Association. Thus selecting whom to hire, Baseball engaged in recrimination by distinguishing between two classes of employees, those who rescinded before July 27 and those who did not. Therefore, Baseball's consideration of an Umpire's participation in the resignation process in making the retention decisions constituted impermissible recrimination against those employees.

In addition, the bisection of the beginning unit into supporters and non-supporters for purposes of the retention decision was a violation of the collective bargaining agreement. This, according to the Association, is supported by the fact that the 22 grievants not only lost their jobs but also have been denied any post employment benefits, such as severance and medical benefits. According to the Association, Baseball cannot accept those resignations and not pay those severance benefits under the League.

The Association further argued that the evidence presented that there were special circumstances with respect to two of the grievants, Mr. Drew Coble and Mr. Gregg Kosc. It asserted that Mr. Coble should be reinstated

because he never did resign from Major League Baseball and Mr. Kosc should be reinstated because he rescinded his resignation before July 27th when positions were available in the American League and he never withdrew his rescission.

Mr. Coble, an Umpire for more than 26 years, was unable to attend the July 14 meeting because he was tending to his terminally ill wife. On July 22, 1999, while the meeting was occurring in Milwaukee, Derek Irwin called Mr. Coble at home and stated that he understood that he resigned based on an Associated Press report. Mr. Coble testified that he had not resigned. Mr. Irwin then, according to Mr. Coble, asked if he intended to resign. Mr. Coble said that he had a lot on his mind and had not made a decision. Mr. Coble further suggested that if Mr. Irwin had any further questions, he should contact Mr. Phillips. Mr. Irwin did not contact Mr. Phillips but tried to talk to Mr. Campbell, who refused to discuss the matter. According to the Association, there was no confirming letter to Coble that the American League had deemed that he had resigned, but Irwin prepared a file memo more than two weeks after the conversation occurred and only prepared it, according to Mr. Irwin, knowing that the memorandum may be helpful in subsequent litigation.

The Association alleged that when Mr. Irwin met with Mr. Coble, Mr. Phillips and others in Gallagher's in New York on January 4th, Mr. Irwin conceded that Mr. Coble had never said that he had resigned and confirmed that he was told to speak with Mr. Phillips. Mr. Irwin further admitted that he had been ordered to write the memo by the staff from the Commissioner's Office. Yet, on July 26, 1999, Dr. Budig accepted Mr. Coble's "resignation," even though there was no factual dispute that Coble never wrote a letter of resignation.

Mr. Kosc, on the other hand, attended the July 14 meeting and did tender his resignation to the American League. However, shortly thereafter, Mr. Kosc submitted a written rescission of his resignation. On July 22, Mr. Irwin again as part of the Milwaukee meeting, contacted Mr. Kosc and stated that Baseball had heard through the press that Mr. Kosc was going to "go back to the Union." According to Mr. Kosc in his testimony, he responded that he was conflicted by his rescission and that he still backed the Association but that he also wanted his job. He told Mr. Irwin to call Mr. Campbell. In any case, Mr. Kosc never again made his resignation effective. However, Mr. Kosc was informed that the American League had received his resignation and that he was therefore terminated.

Again, Mr. Irwin wrote a memorandum some two weeks later in order to protect his position against subsequent litigation. However, if one reads the memorandum Irwin drafted, it states that Mr. Kosc was going to rescind his rescission and may have accepted the fact that he may retire. However, no such confirming document arrived from Mr. Kosc. Indeed, the memo on its face stated that Mr. Kosc was going to take a subsequent action, which he never performed. Nevertheless, Mr. Irwin testified that he interpreted Mr. Kosc's support for the Association as equally a rescission of his earlier rescission.

Given this evidence, the Association argued that neither Mr. Coble nor Mr. Kosc resigned their positions as American League Umpires. Mr. Irwin's testimony, according to the Association, was fuzzy and inconsistent, and he conceded that when he contacted Mr. Coble, he never identified the purpose of his call or the effect of Mr. Coble's responses to his questions. He insisted that Coble stated that he had resigned and that he had sent

the resignation to Phillips and told him to contact Phillips. Irwin, however, never spoke to Phillips but spoke to Campbell who refused to confirm or deny anything regarding these communications. No one ever received a written resignation from Coble or anyone acting in Coble's behalf.

With respect to Mr. Kosc, the Association maintained that he had resigned, then rescinded but stated that he supported the Association. He never stated that he was going to rescind his rescission. Moreover, Baseball never received such document. Mr. Irwin simply attributed Mr. Kosc's support for the Association as being the functional equivalent of a rescission of a rescission; that Kosc had abandoned his job.

The memoranda drafted by Mr. Irwin more than three weeks after the conversation was inconsistent with the testimony. Baseball never received a resignation of Mr. Coble from Mr. Phillips or anyone else. Furthermore, the memoranda were more equivocal with respect to Mr. Kosc because it stated nothing more than an intention at some time in the future to rescind, but he did not do so.

The Association states that this Arbitrator should also consider the conversation in Gallagher's during which Mr. Irwin admitted to Mr. Coble that he might have never indicated that he intended to resign; therefore, the discharges of Coble and Kosc simply fail to satisfy any of the criteria under the agreement. Both were simply victims of discrimination because they were perceived to be Association supporters, and even though both were subjected to recrimination because they failed to disavow the Association's goals and expressed intellectual support for the Association, Coble and Kosc never resigned their positions with the American League.

In conclusion, the Association stated that by the fall of 1999, Mr. Alderson had decided to fire the supervisory

staff of the National League. These terminations stem from the perception that they had been disloyal to the Commissioner and his program of centralization. They were terminated because they actively encouraged Umpires to continue their resistance by refusing to rescind their resignations. Other American League supervisors were retained because they had worked to secure the rescissions of the Umpire resignations: These discharges were accomplished without consulting with the League Presidents. After that, Dr. Budig and then Mr. Coleman negotiated their own financial arrangements and quietly departed Baseball. Thus, prior to the termination of the collective bargaining agreement of December 31, 1999, Commissioner Selig had accomplished the goals he had set forth in the meeting in Orlando in November of 1998. Despite Mr. Alderson's statement that the Commissioner would never usurp the powers of the League Presidents, that is what occurred by that time.

As a result, the Umpires were denied salaries from January 1, 2000 to the present. None of the 22 Umpires received their Article VII-A(1) special events bonus for 1999 and 2000. Furthermore, had these Umpires not been terminated, the merit and skill of a large number of them would have earned postseason assignments in the 2000 post-season series. Umpires lost their health benefits from January 1, 2000, and certain Umpires lost an amount of pay due to their role as crew chiefs. Finally, there was a loss of service credit for the purpose of pension, severance and salaries as a result of the termination. Accordingly, the Association requests that this Arbitrator sustain the Association's grievance in all respects and that it direct the immediate reinstatement of all affected bargaining unit members with full back pay and all benefits, including interest. The Association

finally requests that this Arbitrator retain jurisdiction over this matter for the sole purpose of resolving any disputes that might arise with regard to the implementation of this award.

Arguments and Evidence of the American and National Leagues.

In introducing its arguments and evidence, the Leagues described the Association's action as similar in nature to a squeeze play in baseball. The Umpires had attempted to take a risk by resigning and steal home with the hope of not being called out, and now that they were caught stealing, they are now asking this Arbitrator to award them third base, even though they made the decision to resign in the first place.

The Leagues argued that the grievances should be denied for a number of reasons: First, the Leagues asserted that this is not a case of termination but one involving the "explicit, unequivocal and unconditional" resignation of the Umpires. There is nothing in the agreement that imposed any obligation on the Leagues with respect to the mass resignation of Umpires or their attempted rescissions. Accordingly, there cannot be any violation of the Basic Agreement and, therefore, there is no dispute that can be reviewed by this Arbitrator. Second, even if this Arbitrator accepts the Association's characterization of this proceeding as a termination proceeding, the plain language of the agreement establishes that it is not applicable where that Umpire initiated the termination of employment. Third, the Basic Agreement does not invest this Arbitrator with the authority to substitute his judgment for the final and binding decisions that are within the discretion of the League Presidents. Finally, if those decisions are subject to review by this Arbitrator, the decisions by the League Presidents did

not violate the agreement unless it is established that they had abused their discretion and acted in an arbitrary and capricious manner.

As indicated above, the Leagues have a substantially different interpretation of the events that occurred during the course of 1999. According to the Leagues, the events that gave rise to this controversy began not in November of 1998 but on July 5, 1999, when Gerald Crawford, and Richard Phillips issued what the Leagues viewed as a scathing memorandum to its members. That memorandum was recited in full in the earlier part of this opinion.

The Leagues maintained that at the time the letter was issued, Richie Phillips was well aware that if the Association had engaged in a strike, Baseball would not only fire Umpires but also since they did not voluntarily terminate their employment they would not be entitled to voluntary termination pay. In an effort to avoid this result, Phillips crafted a mass resignation scheme. Phillips was aware that Baseball would treat the resignation scheme as a strike and accept resignations and proceed to hire replacements. Notwithstanding the possible consequences of this action, Mr. Phillips and the Association proceeded with this resignation strategy.

According to the Leagues, on July 15th, 23 American League Umpires and 34 National League Umpires resigned their employment effective September 2, 1999. With the exception of Greg Bonin and Mark Hirschbeck, the entire staff of the National League tendered letters of resignation. The letters declared that each resignation was pursuant to Article VIII-D of the agreement that provides that if the Umpire terminates his own employment, he is entitled to severance pay.

Almost immediately after the submission of the resignations, the Association and individual Umpires

engaged in conduct through public statements and other actions that served to emphasize that they had indeed quit their employment with the Leagues. The Association incorporated a new company, Professional Umpire Services, Inc., and each Umpire entered into a professional service agreement. Each agreement prohibited the Umpires from rendering services to any other entity, including the Leagues except with the permission of Professional Umpire Services, Inc. Mr. Phillips himself publicly stated that the resignations were a fact and that the Umpires collectively were entitled to more than $15 million in termination pay. Now, the Leagues contend, and incredibly, the Umpires are stating that they did not intend to resign.

Based upon this activity, the Leagues strongly maintained that it was far too late for the Umpires to change their minds. When they made the decision in July, they felt that they might lose their jobs. The Umpires did resign, and they were prepared to take the final consequences of that action. According to the Leagues, the Umpires must have intended and expected Baseball to take the resignations seriously or there would have been no point for them to engage in such obvious and controversial conduct. The Leagues, confronted with the potential resignations of 57 Umpires, viewed the resignations as jeopardizing its ability to operate its business at its most crucial time. Contrary to the Association's description of Commissioner Selig's July memorandum in which he stated that they would continue to operate, the Leagues maintained that the memorandum described the conduct appropriately as a "threat," but he also wanted to exert a calming influence in the face of such a threat and express confidence that Baseball would continue to operate. Thus, no action was taken during the week after the resignations because the Leagues were

engaged in internal discussions to analyze potential options concerning how it would respond to or address the Association's actions.

At the same time, even though that the Umpires now state that they did not intend to resign, Mr. Phillips made statements clearly indicating that there was nothing to negotiate concerning the resignations. Rather, Mr. Phillips took the position that the Umpires had formally resigned their positions, had signed contracts with the professional services corporation, and the first thing they would do would be to collect in excess of $15 million in severance that Baseball owes them. Despite these statements that clearly indicated the seriousness of the Association's collective action, a number of Umpires began to rescind their resignations. By July 22, the date of the meeting in Milwaukee, 7 American League and 2 National League Umpires had submitted rescissions.[5] At the same time, Mr. Phillips presided over a conference call to bolster his Association support.

The Leagues asserted that it was critical that the Commissioner convene the meeting with the League Presidents because decisions to resign were a universal issue affecting all of Baseball. Therefore, it was appropriate for him to become intimately involved in order to oversee a collective, unified response for the "best interests of Baseball."

The Association maintained that during this period there were certain discriminatory telephone calls made to certain Umpires encouraging them to rescind their resignations. The evidence presented did not support the Association's assertions. Rather, the Leagues asserted that several American League Umpires called League

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[5] There was an initial ambiguity whether one Umpire, Mr. Jim McKean, had not resigned.

officials and inquired where matters stood and were told that, "first, the League was in the process of making offers to and hiring permanent replacements; secondly, others had tendered resignations that had been accepted, and, finally, while there was no deadline, there was little time remaining for them to tender rescissions that could be accepted. To that extent, if Grievants Garcia or Hickox had called instead of relying on what Mr. Phillips and Mr. Campbell had told them, they would have received the same advice, and regardless of the nature of these calls, the Leagues maintained that there was nothing wrong with the Employer, in trying to assure the conduct of its business, urging individuals who had resigned to reconsider and to rescind their resignations."

Therefore, by July 22nd, the Leagues were faced with the prospect of not having Umpires during the final month of the regular Major League season and during the postseason. The Leagues were also confronted by the fact that Mr. Phillips was engaged in serious efforts at that time to organize Minor League Umpires. These Minor League Umpires were the only pool of Umpires with professional experience who could operate as effective replacements during the period of September and October, the critical months of Major League Baseball. The Leagues' personnel also believed that the hiring of replacements would encourage Umpires who had resigned to rescind their resignations and to refrain, if they did return to work, simply from resigning again. Therefore, it was decided that the Leagues should and would proceed to make offers of employment to a number of Minor League Umpires. The League also contended that rather than offer temporary replacements in case of the resignations, they decided to offer permanent employment, because they believed that the Minor

League Umpires would not accept offers of temporary jobs for fear of being labeled as scabs.

Contrary to the Association's assertions, the League Presidents concurred with the decisions that were reached. Accordingly, representatives of each League were sent into separate rooms to begin the hiring process. The record of the hearing left no doubt that the National League's decisions were made without any direction from the Commissioner's Office; specifically, there was no evidence that these hiring decisions were directed by Commissioner Selig, Mr. Alderson or any other official. Therefore, by the end of the day, the National League had made 8 offers that were confirmed and accepted. At the same time, in the American League, Dr. Budig and Derek Irwin had made offers as well. By the end of the day, the American League made offers to 12 Minor League Umpires that were confirmed and accepted.

In order to determine how many Umpires were available, the American League needed to contact Mr. Drew Coble to determine if he in fact resigned. It was necessary for the American League to have correct information to precisely determine which Umpires had resigned and which Umpires had rescinded. In addition, there were press reports and other circumstances that left the status of Messrs. Coble and Kosc in a state of considerable ambiguity.

With respect to Mr. Coble, the evidence indicated that he was not identified as one of those resigning nor was there a resignation letter signed by Coble included in the package presented by the MLUA. At the same time, the Associated Press had reported that Coble had signed a letter, thus, Derek Irwin felt it was necessary to call Mr. Coble and speak directly with him. Mr. Coble stated that he had resigned, had faxed a resignation letter to the

Association, and Irwin could get that letter from either Mr. Phillips or Mr. Campbell.

Mr. Coble disputed the Leagues' version of the telephone conversation, however, the League asserts that Mr. Irwin's account of the conversation deserves credit and that Coble fully intended to include himself among those who had resigned; rather, Coble had reason to reconstruct his version. Mr. Coble admitted that he was a Association guy, which would imply that he stood with the Association. Furthermore, Mr. Campbell had testified that he told Mr. Coble that given the circumstances with his wife, that he did not have to worry about not attending the meeting because, "they knew where he stood." This was further confirmed in a conversation with Marty Springstead, who also knew where Mr. Coble stood.

With respect to Mr. Kosc, the evidence indicated that Mr. Kosc did send a resignation. On July 21, he faxed a letter rescinding his resignation. However, there was a press report stating that Mr. Kosc had stated: "I am in the Association. I have not rescinded. I'm just going to leave it at that." According to Mr. Irwin, Mr. Kosc told him that he was "sticking with the Association" and that he had in fact resigned. There was also a contemporaneous memorandum prepared by Mr. Irwin that is consistent with his testimony about the conversation. In addition, there are handwritten notes that state that Kosc had stated that he was going to rescind his rescission. Therefore, based on the facts presented, the American League had every reason to consider Mr. Kosc as having resigned his employment.

The Leagues further contended that contrary to the Association's assertion, by July 23 there was no support of the contention by the Association that it was ready to "surrender." The Leagues acknowledge that there were

a number of conversations between Richie Phillips, Len Coleman and Bob Kheel, and in one of the conversations, Phillips declared that "Bud" had won and that the MLUA was prepared to surrender. However, the Leagues contended, that talk of having won was meaningless in light of the fact that there remained over 30 Umpires who had resigned their employment and who had not even attempted to rescind their resignations. It is important to note that during those conversations, Phillips never said that he or the MLUA were rescinding the resignations of any Umpires, nor is there any evidence that Phillips advised any Umpire individually or en masse to either rescind or consider rescinding his resignation. He also never proposed any terms on the basis of which the dispute could be resolved; rather, the Leagues stated, that Mr. Phillips and the Association continued to fight. Thus, on July 23 the Association filed a lawsuit seeking a declaration that the Umpires were entitled to certain termination benefits under the Basic Agreement because of the voluntary termination of their employment. Thus, the Leagues conclude, "In sum, and as had been the case in many other occasions, Phillips was continuing to play both ends against the middle, and there was little if any nexus between what Phillips said and what he did."

By July 26, the American League, by virtue of the acceptances from Minor League Umpires and the rescissions it had received from Umpires who had previously resigned, had returned to its regular complement of umpiring staff. Dr. Budig's consequently sent a letter to the remaining American League umpires stating that all vacancies had been filled and that he was accepting the resignations of the remaining Umpires.

In the National League, no additional Umpires resigned. Therefore, on July 26, the National League hired 5 additional Minor League Umpires. In this regard, the Leagues

acknowledged that this was done after consultation with the Commissioner's Office, and inasmuch as Mr. Coleman may have disagreed or disliked the idea, he proceeded to hire those Umpires.

Finally, after the Association became aware that the National League had hired additional replacements and had also known about the letters from the American League, it sought a temporary restraining order preventing the Leagues from accepting the resignations of the Umpires, and it was after they had failed to obtain such injunctive relief from the Federal Court, the Association finally faxed to the Leagues letters purporting to withdraw the notices of intent to resign.

According to the Leagues, the so-called "withdrawal of notices of intent to resign," did not have any consequence on the American League staff because the rescissions that were received by the Leagues prior to that date, to the extent that the vacancies remained, were accepted; therefore, as far as the American League was concerned, all vacancies were filled. However, in the National League, the withdrawal letters were received at a time in which it had 19 vacancies remaining. The letter withdrew the resignations of 32 Umpires, and thus the National League was required to make decisions regarding which of the 32 rescissions to accept to fill those 19 vacancies.

In an attempt to reach a resolution of this matter, both Mr. Coleman and Mr. Kheel repeatedly offered the Association an opportunity to bargain over the matter. Unfortunately, the Association made no recommendations or suggestions except that all Umpires should be included as one group and that seniority should govern with respect to which Umpires should be retained. The Leagues further contended there is absolutely no evidence suggesting that the National League was required

to base its decisions on the criteria set forth in Article VIII-A of the Basic Agreement. This was not even proposed that as a possible course of action. Thus, "the decision to attempt to follow at least as a general guide," the "merit and skill" standard set forth in Article VIII.A was made by Coleman based upon advice from Mr. Kheel that the situation with which he was confronted was unique and was not governed by any provisions of the Basic Agreement.

Therefore when Mr. Coleman embarked on this very difficult decision concerning which of the resignations to accept, he was acting in good faith and there was no evidence in the record that would suggest otherwise. Therefore, even though Mr. Coleman decided to apply the merit and skill standard in the broadest sense, he could have made his decision on any lawful basis. Consequently, Mr. Coleman considered which Umpires to select based upon a number of factors, including "technical ability, attitude, temperament, ability to instruct, teach, supervise and lead others and the desirability of having a balanced staff. In this regard, the concept of a balanced staff consisted of language serving Umpires, mid career Umpires, and junior Umpires, and to the extent possible, reflected considerations of racial and ethnic diversity. Decisions were also made with the consultation of Mr. Runge. Most importantly, according to the Leagues, there was no claim that Mr. Coleman made any consideration as to whether an Umpire was or was not a supporter of the Major League Umpires Association. Indeed, several Association supporters, including the President, Mr. Crawford, had their resignations accepted.

Mr. Coleman also asked for Mr. Alderson's recommendations with respect to the selection process, but neither Alderson nor anyone else from the Commissioner's

Office ordered or directed Mr. Coleman to accept certain rescissions or reject others. The Leagues further continued to state in its their brief:

> "Consistent with the antipathy Coleman had for Alderson and his disregard for Alderson's suggestions on just about all subjects, and notwithstanding Alderson's advice in this instance," Coleman accepted the rescissions of a number of Umpires whose request for rescission Alderson had recommended be rejected. These included Mr. Froemming, Mr. Demuth, Mr. Lane, Mr. Daily and Mr. Hernandez. Conversely, Mr. Coleman denied the rescission requests of Umpires whose rescissions Mr. Alderson had urged to be accepted. These included Mr. Hallion, Mr. Pulli, Mr. Dreckman, Mr. Holbrook and Mr. Nauert. In each and every case, exclusively Mr. Coleman in consultation with Mr. Runge made the ultimate decision.

The Leagues contend that even if Article VIII applied in those unprecedented circumstances, the Major League Umpires Association and the Umpires received precisely that to which they claim entitlement under that article, the exercise of discretion by the President of the National League.

Given this view of the events that caused this controversy, the League asserts, first, that the Umpires had quit their employment and were not terminated. Indeed, the Basic Agreement did not provide any obligation on the Leagues under these circumstances. Therefore, there could not be any violation of the agreement. Consequently this dispute is not properly before this Arbitrator.

In support of this contention the Leagues maintained that, as a matter of law, the resignation letters constituted a permanent severance of the employment rela-

tionship, and, thus, the Leagues were fully justified in proceeding to hire permanent replacements to fill the vacancies that were created. This was supported by a number of factors that demonstrated that the resignations were considered to be permanent. These factors include the following:

1. The Leagues received individually signed identical letters, each of which explicitly stated an unconditional declaration that effective September 2, 1999, "I hearby resign my employment from the American or National League."

2. Each letter described the Umpire's resignation as being pursuant to Article VIII.D of the Agreement, which they contend entitled them to termination pay because the employment was terminated by the Umpire's own action.

3. That there were subsequent public statements stating that the resignations were to be taken seriously.

4. The resignations were followed by the formation of the Professional Umpire Services, Inc., accompanied by the signing of personal services agreements, pursuant to which the resigning Umpire agreed to render Umpire services exclusively for Professional Umpire Services, Inc.

5. The MLUA eventually commenced an action in the U.S. District Court for the Eastern District of Pennsylvania referring to the voluntary termination and seeking declaratory judgment and the entitlement of the payments to Article VIII-D.

6. When the rescissions did begin to arrive, no Umpire asked for any reversal of a decision to terminate them.

7. When all of the resignations were rescinded, there was no request to rescind any terminations.

8. When a subsequent unfair labor practice action was brought before the National Labor Relations Board in August 1999, the MLUA again referred to the Umpires as having resigned and claimed protection under the National Labor Relations Act.

9. Only until the arbitration demand was filed did the MLUA ever refer to the Umpires as being terminated in violation of the collective bargaining agreement.

Based on these factors, the League contends that there cannot be any violation of the Basic Agreement within the meaning of the dispute resolution provisions, Article XV.

The League further contends that even if the Umpires were terminated, there was no violation of Article VIII-A of the collective bargaining agreement. Article VIII-A did not have any applicability to the circumstances involved in the case. This is supported by the fact that at the time when the National League had to decide which rescissions to accept and invited Mr. Phillips to make his input, while he did not become involved, he did not in any manner suggest that Article VIII-A should control the decision.

In the American League, on the other hand, there is no dispute that by the time of the final rescissions, there were no positions available. Thus, there was no requirement, at least for the American League, to have 9 extra Umpires on its staff. According to Article VIII-B of the agreement, the League Presidents have the discretion to determine the appropriate size of staffs. Therefore, the Association could not assert, especially in the National League, that the Basic Agreement required it to add 13 additional Umpires to whom it was clear by July 27th

that there were no positions available, and thus, the employment of these 13 National League Umpires came to an end, and they cannot be regarded as having been terminated.

Returning to Article VIII-A, the Leagues contended that the provision was never intended to apply to conduct involving the mass resignation of the bargaining unit. Rather, the plain language suggests that it should cover situations in which the Leagues initiated the termination of employment. This is a term that requires some type of affirmative action by the Employer. This is clearly not supported by the facts in this case. Rather, it is clear that the Umpires engaged in self-help and do not deserve to be awarded for having taken matters into their own hands.

The Leagues also maintained that the terms "retained" and "selected" do not apply to this situation as well. The Leagues interpret the agreement as stating that the term "retain" should be viewed in context of the term "discharge" and is not relevant to the current circumstances. Thus, the Leagues maintain that the Basic Agreement no longer covered those who resigned. The resigning Umpires were no longer members of the regular staff and thus had no more entitlement to an Umpire's position than anyone else.

The Leagues next argue that even if Article VIII-A was applicable, the Arbitrator cannot substitute his judgment for those made by the League Presidents because the agreement gives the League Presidents the discretion and the final and binding authority with respect to the retention of Umpires. In support of this contention, the Leagues maintain that the parties to the Basic Agreement indeed intended to circumscribe the authority of an Arbitrator in matters of the kind in this case. The Arbitrator

should interpret that agreement in a manner consistent with that content.

In this regard, the Association agreed while negotiating this agreement to invest the League Presidents with the unusual degree of discretion, because the League Presidents were, as stated by Mr. Crawford in his testimony, "honorable men." Therefore, it agreed that the decision of the League Presidents in these matters were final and binding and not subject to the review of arbitration unless we write that term out of the collective bargaining agreement. This is the essence of the agreement reached between the parties. Thus, in these unique circumstances, it's only appropriate to interpret Article VIII-A and the term "final and binding" in its plain context, regardless of whether the issue is discharge, termination, resignation or rescission, and even if the assertion that the decision failed to take into account merit and skill or was allegedly infected with discrimination or recrimination.

The Leagues also addressed the Association's contentions that the Commissioner had somehow intruded upon the collective bargaining agreement. It stated that these events, as stated at length by the MLUA, were only manufactured or manipulated by the MLUA leadership in order to provoke the Umpires into a course of conduct in which they willingly chose to violate the Basic Agreement and put their jobs at risk. Thus, there was no evidence that the Commissioner had anything to do with the decisions ultimately made concerning any Umpire.

The Commissioner is the Chief Executive Officer of Major League Baseball. The Major League Presidents report to the Commissioner. This is an entity that encompasses both the American and National Leagues and is vested with the authority to act in the "best interest" of the institution and subjects both Leagues, all Major

League Clubs and all other officers and employees to that supervisory authority. Indeed, the MLUA itself contains an agreement by which the Umpire has to accept, abide by and comply with the Major League Agreement. Thus, the League Presidents have for quite a long period of time reported to the Commissioner as a formal matter and have as a practical matter, and even if they disagreed, accepted or abided by the Commissioner's direction and instruction with respect to matters involving Umpires.

According to the Leagues, the evidence indicates that, historically, Mr. Phillips had, without hesitation, gone to the Commissioner's Office requesting, if not demanding, the Commissioner's involvement on behalf of the Umpires and playing off the League Presidents against the Commissioner. In this regard, the Leagues cited several examples where the Major League Umpires Association had used the Commissioner's Office to trump or otherwise overrule decisions of the President specifically against their wishes. Thus, the MLUA, and Phillips in particular, has not acknowledged this relationship, but when perceiving an advantage from doing so, has not hesitated to capitalize upon or made use of it. The claim of the MLUA in this regard should be rejected.

The Leagues maintain that given this relationship, the events complained of at length by the MLUA is not an excuse for the individual decision of the Umpires to resign but is rather "smoke" orchestrated by the Association to engage in this illegal conduct and, therefore, cannot be supported as a matter of law or as a matter of fact. Specifically, the Leagues, while maintaining their objection to the use of the memoranda offered by Mr. DuPuy, state that the evidence indicates that there was no such "plot" to usurp the powers of the League President and centralize the supervision of Umpires.

In this regard, the Leagues admit that one of the subjects discussed in the Orlando meeting was the unfavorable public perception of umpires that appeared to have been accentuated by certain incidents that had occurred during the 1997 and 1998 postseasons and what might be done to address that issue. It was determined that in order to address the lack of uniformity between the two Leagues, the methods and standards in which umpires approach umpiring, that certain functions be centralized under the office of the Commissioner so that there would be a greater degree of uniformity across the two Leagues. Thus, it was in this context that Mr. DuPuy issued his memorandum.

The memorandum acknowledged the need to consult with League counsel in order to review available options precisely because of the collective bargaining agreement between the Leagues and the Umpires that expired at the end of the 1999 season. Thus, in its own terms, the purpose of the memorandum was to express a goal to be accomplished within the limitation of the Basic Agreement. Any indication or any desire for centralization during 1999 was clearly not acted upon because of the clearly recognized limitations of the collective bargaining agreement. Therefore, the League Presidents, in their capacity as someone who reports to the Commissioner, and then the Commissioner like any other chief executive officer, can require that those reporting to him can report through a designee, in this case, Mr. Alderson. This, according to the Leagues, was not a violation of the Basic Agreement, and it was reasonable to have the Presidents consult with the Commissioner's designee for anything that has a long-term effect on bargaining goals.

The Leagues also pointed out that in certain respects, the memorandum requesting the League Presidents to

consult with Mr. Alderson never came to fruition because Mr. Coleman simply refused to abide by those suggestions. It is acknowledged that Mr. Coleman had declared that he was not going to have any intrusion by the Commissioner's Office on his "turf."

Given the strategic outlook of the Commissioner's Office, the Leagues do not dispute that Mr. Alderson requested the meeting with the MLUA leadership in order to diffuse any speculation about his role in connection with the supervision of Umpires and to explain what could be expected. Mr. Alderson stated that he was going to be the Leagues' representative for a new or successor labor contract and that an objective was to centralize the umpiring function under the offices of the Commissioner, but that there would be no centralization during the 1999 season.

According to the Leagues, Mr. Aldi:xson participated in this meeting to "throw down the olive branch and not to throw down the gauntlet." Nevertheless, exemplified by the memoranda drafted by Mr. Phillips dated July 5, 1999, that this served as a basis for a rallying cry that led to the eventual resignation of the Umpires.

Thus, the evidence concerning the events prior to July 5, as testified to mainly by Association witnesses, was viewed by the Leagues as irrelevant. Moreover, if there were any substantive disputes about the strike zone, the simulator or the monitoring of pitches, the Cuban games or the hiring of any "scab" evaluators the Association could have invoked the dispute resolution process as is set forth in the Basic Agreement. Even in light of the Association's excuses, and even if the Leagues had refused to process those grievances, the MLUA could have enforced the Leagues' contractual obligation to arbitrate disputes.

The Association further submitted evidence that insinuated that the termination of certain Umpire supervisors was basically in retaliation for their support of the MLUA. In this regard, the Leagues assert that there were legitimate reasons for discontinuing the service of Messrs. Runge, Wendelstedt, Quick and Deckinger for the remainder of the 1999 season. At the time the Commissioner's Office was concerned with the fact that supervisors had called resigning Umpires during July 1999 and encouraged them not to rescind and that such conduct was clearly at odds with the interest and goals of the Leagues and the Commissioner. This took on added urgency as some or all of those supervisors were believed to be encouraging new hires to engage in a September work stoppage, thus making it necessary to place substitute Umpires in certain ballparks during this period as a precaution against any other work stoppage. There was also additional concern stated by the Leagues with respect to the arrangement made by Mr. Wendelstedt, who was not clearly aligned with management interest, to act as consultant for NBC during National League post-game broadcasts in order to interpret controversial Umpire calls and, in effect, evaluate Umpires in a public forum. For these reasons, it was decided to inform the supervisors that their services would no longer be required during 1999 but that their contracts would be honored for the remainder of the season.

Finally, even if the decisions made by the League Presidents with respect to retention of Umpires is subject to review by this Arbitrator, it can only be overturned if they were viewed as an abuse of discretion or were found to be arbitrary and capricious. In this respect, there is no evidence that there was an abuse of discretion. The Leagues contend that the decisions of the League Presidents with respect to the retention of certain

Umpires could not be viewed as arbitrary or capricious. With respect to the American League, there was no retention decision made within the MLUA, so, therefore, those decisions could not be taken under scrutiny. With respect to the National League, however, the League noted that the MLUA delayed the submission of its rescissions for more than five days after its alleged "surrender" and after the National League had hired 13 permanent replacements and only then dropped a "package" of 32 such rescissions on the National League's lap. Therefore, the Leagues maintain that it is not equitable for the MLUA and Phillips to now allege fault in the process and to complain about the manner in which the National League President exercised his discretion, given the circumstances in which he was placed.

Indeed, Mr. Coleman was required to make difficult, "often hairsplitting decisions based on peculiar facts and circumstances of each case, and there was no doubt that he proceeded in complete good faith." The criteria that he used were quite relevant, appropriate and well within the boundaries of merit and skill, even though those terms were admittedly highly subjective and incapable of precise definition. Thus, Mr. Coleman's determination in this respect can only be upset in a showing that it was made in an arbitrary or capricious manner. It is noted in this regard, that arbitrators routinely decline to upset management determinations in this area. Thus, where the collective bargaining agreement contemplates an exercise of management discretion and that discretion was exercised reasonably and in good faith, an Arbitrator should hesitate to substitute his own judgment.

In conclusion, the Leagues assert that even if there is a finding of some abuse of discretion regarding certain individual Umpires, the appropriate remedy would be for the Arbitrator to remand the case to the League President

with the direction to make further findings to establish a record. In this regard, and given these arguments, the Leagues request that the grievances be denied.

ANALYSIS

Introduction

I have reviewed all of the evidence presented, including the notes of testimony, exhibits and briefs. The evidence in this case was presented over 17 hearing days over the course of a year. This included over 3,600 pages of transcript 2,000 pages of exhibits, plus, approximately, 400 pages of briefs as well as reply briefs. Due to the nature of the parties involved, this matter has also received considerable attention and notoriety. However, despite the attention, volume of evidence and complexity of this case, this controversy can be summarized as the culmination of a struggle between the rights of management to make strategic changes in the structure and governance of its industry and the rights of the Association to preserve what it perceives to be certain contractual rights related to that structure.

This struggle has resulted in a substantial amount of litigation not only in this matter but also before the National Labor Relations Board and the Federal District Courts. The events in this case have affected a number of careers, loyalties and friendships that have existed over a number of years. Unfortunately, it is uncertain whether this award will ultimately resolve this matter. Indeed the nature of the relationships between the individuals involved in this controversy may never be reconciled to the point that existed prior to 1999. Yet this is a concern that is common within the resolution of any

labor-management dispute arising out of changes to corporate structure and its underlying culture.

Regardless of the complexity and intensity of the issues as well as the nuances of the issues involved, the arbitrator's role is simply to read, interpret and apply the collective bargaining agreement in light of the evidence that is presented. The Demand for Arbitration in this matter described the nature of the dispute as whether the 22 grievants involved were improperly terminated under the collective bargaining agreement. The dispute resolution language of the agreement gives me the jurisdiction to resolve disputes concerning "claimed violations of the provisions of this agreement." While there may be conflicting views concerning the propriety of the actions taken by both sides in this case, the sole question in this case concerns whether the actions taken were appropriate under the terms of the collective bargaining agreement.

The initial determination that defines the rights of the grievant's under the contract concerns whether the grievants resigned their positions or whether they were terminated. If the grievants were terminated, the language of Article VIII-A of the collective bargaining agreement then defines their rights. Article VIII-A applies to individuals with five or more years of service who were "discharged" by a League President. If the 22 grievants indeed resigned, then the provisions of Article VIII-A would not apply to those circumstances, and, therefore, any action taken by the League President would not be subject to the limitations set forth in the collective bargaining agreement.[6] As will be discussed

[6] One of the issues discussed in this hearing concerned whether the actions of the grievants would entitle them to payment of termination pay as set forth in Article VIII-D of the collective bar-

below, the limitations set forth in Article VIII-A as it relates to merit and skill applied because the President of the National League chose to apply that standard when he had to decide which of the 19 Umpires he would retain of the 32 who rescinded their resignations on July 27.

The Association, who had the burden of going forward in this case, presented evidence to support a number of arguments contending that Baseball had violated the collective bargaining agreement between the Leagues and the MLUA. In summary, the Association stated that the Umpires were forced to submit what they describe as letters notifying the League Presidents of their intent to resign due to the attempt of the Commissioner's Office to take over the management responsibilities of the League Presidents. The Association then asserted that once the notices were submitted, the Leagues did not have to replace bargaining unit members because the resignations were not effective until September 1999. Therefore, any action to sever the grievants from their positions prior to that date can only be construed as terminations under the collective bargaining agreement. The Association further contends that in replacing the members of the bargaining unit, the Leagues violated the collective bargaining agreement by discriminating against certain active Association members by encouraging certain Association dissidents and others to rescind their resignations while not communicating such information to union activists. The Leagues continued to discriminate against certain Umpires in making decisions concerning which umpires to retain because it did not consider all members of the bargaining unit, including those who did not resign and those that were hired as

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gaining agreement. This issue is not before this Arbitrator. Therefore I will not be making any determination on that issue.

permanent replacements. Finally, even though the Leagues were unjustified in the hiring of replacements they continued to be arbitrary and discriminatory in their selection process in the National League because they failed to consider the relative skill and merit of those umpires who were eventually terminated.

It should also be noted through all the arguments, there remained questions concerning whether one grievant actually resigned and whether another grievant did rescind hs resignation while openings were available.

The Events Preceding July 14, 1999.

The parties presented a substantial amount of evidence concerning whether certain controversial events that occurred between November 1998 and July 1999 represented a plan of action by the Commissioner of Baseball to take over the management responsibilities of the League Presidents thereby justifying the Association's action. In this regard, the contract, which was set to expire on December 31, 1999, clearly stated that the agreement was between the MLUA and the American and National Leagues. The Agreement gave the League Presidents broad discretion in the determination of and control over staffing and Umpire tenure. The League Presidents also had substantial discretion with respect to the resolution of disputes that might arise under the Agreement.

It is also evident that the constitution of both the American and the National Leagues stated that the League President is the CEO of the League with direct responsibility over Umpires. The Commissioner on the other hand, did not have any specific supervisory authority over Umpires. Rather, he does have broad powers to take action that is in the best interest of baseball. This best interest provision gave the Commissioner signifi-

cant latitude with respect to issues of governance as well as strategic planning in areas that affect the entire game rather than one specific League. Indeed, baseball history is full of examples of instances in which the Commissioner had taken positions and instituted policies affecting both leagues because such action was necessary for the universal interest of Baseball. In this context, it is clear from the evidence that the events that eventually resulted in this arbitration concerned the execution of plans related to the overall operation of the Game.

There is no dispute that in late 1998 or early 1999 the Commissioner's Office had given consideration to a strategic plan that would eventually consolidate League governance into the Office of the Commissioner. This included the more centralized supervision of the officiating of baseball games. The evidence credibly established that there was substantial concern within baseball as well as within the mass media regarding the accountability of Umpires, their skill on the field and the perceived inconsistency between the two Leagues with respect to officiating practices. Given this desire to take certain coordinated steps regarding the supervision of Umpires, Mr. Alderson was given the responsibility of working with the League Presidents in order to first try to establish some consistency with respect to supervision and to eventually work toward the centralization of such supervision under the Commissioner's Office.

It is also clear from the evidence that the League Presidents did not receive the responsibility given to Mr. Alderson by the Commissioner's Office in a consistent manner. There is no specific evidence indicating the manner in which Dr. Budig received Mr. Alderson's recommendations. For the most part, he tended to cooperate with the recommendations despite the Association's protest. Mr. Coleman, on the other hand, vocally dis-

agreed with Mr. Alderson's role and had clearly indicated so to the point in which he had retained counsel to discuss the perceived violations of his employment agreement with the Commissioner's Office.

It is undisputed that Mr. Coleman also enjoyed a close personal relationship with Mr. Phillips. Indeed, both testified that they would spend family outings together and would regularly play golf and discuss issues involving League business including the supervision of Umpires. It appeared that information was regularly shared between Mr. Phillips and Mr. Coleman. The strength of this relationship presents a critical premise for one to reach a conclusion that Mr. Coleman's discontent with respect to the Commissioners plans regarding the centralization of Baseball in general and the supervision of umpires in particular had been communicated to Mr. Phillips and may have helped to fuel this entire controversy.

By January 8th, 1999, when Mr. Phillips and the officers of the MLUA met with Mr. Alderson in Philadelphia, Mr. Phillips clearly had some idea of the position of the Commissioner's Office with respect to the supervision of Umpires. Therefore, even though the initial conflict regarding the central coordination of the supervision of umpires was between the League Presidents and the Commissioner's Office, the Association by that time had taken the position based upon the information that it had received, that the Commissioner's Office was attempting to "usurp" the responsibility of the League Presidents in violation of the collective bargaining agreement. The Association's reaction at that meeting, stating that it would only deal with the League Presidents even though Mr. Alderson stated that he would be the point person at future negotiations and would not do anything "official" with respect to the current agree-

ment, indicated that the Association had essentially allied itself with Mr. Coleman and the National League on this issue.

The conflict generated by the views of the Association and Mr. Coleman with respect to the Commissioner's plans manifested itself through the subsequent events in the early part of 1999. This included confrontations over the strike zone, the charting of pitches, and the simulator. As time passed, the Association was becoming increasingly frustrated. It felt that the Commissioner's office was controlling league policy in violation of the agreement. Yet the Commissioner was not meeting or talking with them concerning these issues. However, when it tried to approach the persons with whom it regularly settled labor issues, the League Presidents, most vocally through Mr. Coleman, stated that they no longer had any authority to supervise Umpires and had thus delegated this responsibility Commissioner's Office.

It is this Arbitrator's view that regardless of the validity of the frustrations of the Association membership just before the July meeting, there were a number of available means within the structure of the collective bargaining agreement through which the Association could have asserted its rights without taking a risk that would have sacrificed the careers of a number its members. The Association maintained that by July 1999 it had few choices other than a job action in which to enforce its rights under the agreement. I must disagree. It is a basic understanding in labor relations that the collective bargaining agreement, while setting certain wages and other terms of employment, may in all probability be subject to disputes concerning its interpretation and application. These disputes are often subject to forces generated by changes due to time and/or other circumstances that may present themselves during the term of the agreement.

In that regard, the parties negotiated a dispute resolution procedure to resolve such issues in order to avoid disruptions in the employment relationship created by strikes and similar job actions. As a reflection of this interest, the collective bargaining agreement between the Association and the Leagues also contained a no strike clause in which the MLUA specifically agreed that it would not engage in any strike or "other concerted work stoppage" during the period of the agreement. The Association also agreed that it would use its best effort to cause each Umpire to faithfully carry out "their obligations as employees".

The relationship between a no strike clause and the dispute resolution procedure has always been considered to be the keystone of any collective bargaining relationship. A union agrees that it would not engage in any action to disrupt the employment relationship during the term of the agreement as long as there is an enforceable process though which it may internally resolve disputes. Indeed, courts have readily forced parties to arbitrate disputes arguably covered by the collective bargaining agreement. Even if there is a question whether the dispute is substantively subject to the grievance and arbitration procedure, it is established labor policy that such a question is best resolved through the arbitration process.

The evidence indicates that by July, while there may have been certain disputes concerning the Association's interpretation of the application of its contract with the Leagues, the Association could have resolved this matter through the grievance and arbitration procedure. Indeed, the evidence indicates that with regard to several of the disputes, grievances had been filed and were awaiting arbitration.

The Association contended that in many respects the dispute resolution process had broken down. The League Presidents were no longer in the position to hear disputes and that it would have taken longer to resolve the disputes. Indeed the Association asserted that the disputes never would have been resolved within the term of the collective bargaining agreement. Again, I must respectfully disagree that the time it may take to resolve these disputes presented an acceptable excuse for the Association to avoid the dispute resolution process. First, the process itself provided that if there is no resolution of the dispute, (presumably that would include the incapacity of the League Presidents to provide a resolution) then the Association would have the right to file a demand for arbitration with the American Arbitration Association. Second, it has always been acceptable and recognized by arbitrators and the courts that grievances filed during the term of the collective bargaining agreement concerning events that arose during that term are subject to final and binding arbitration even though the agreement itself may have expired.

It is common practice within labor-management relations that parties who have substantial disputes in the final year of a contract normally fold those issues into the negotiations for a new collective bargaining agreement. The evidence certainly established that the Commissioner's Office was willing to begin negotiations for a new agreement as soon as the necessary modifications to its constitution were executed and ratified. This would have presumably resulted in negotiations toward a new agreement without the need for incurring the risky consequences that accompany a collective job action. Therefore, based on this evidence, I must conclude that the events as presented prior to July 14th, 1999 did not provide justification for the Umpires to take action outside

of the dispute resolution parameters of the collective bargaining agreement to secure a resolution of their complaints.

The Status of the Resignations and the Hiring of Replacements

Rather than take advantage of the avenues available within the parameters of the collective bargaining agreement, the Association engaged in a strategy that had the effect of destabilizing the employment relationship during the term of the agreement. On July 15, 1999, counsel for the MLUA, Patrick Campbell, submitted letters to the American and the National Leagues enclosing the resignations of approximately 57 Umpires. The resignation letters were all identical stating: "Effective September 2, 1999, I hereby resign from my employment from the American [National] League pursuant to Article VIII(2)(D) of the basic Agreement between the American [National] League of Professional Baseball Clubs, and the Major League Umpires Association dated January 1, 1995. I hereby demand my voluntary termination pay."

The Association has described these letters as "notices of intent to resign." The Leagues assert that these letters were unequivocal resignations on a particular date. Regardless of the interpretation of the language and intent contained in these letters, it is clear that the letters were submitted as a collective action sponsored by the Association. The resignation letters clearly state that the individual signing the letter would in fact resign on a specific date certain. The question raised by the language in these letters concerns whether the Leagues had violated the agreement by hiring permanent replacements even though the incumbent Umpires were still

employed and could have possibly changed their mind and rescinded their resignation prior to the effective date.

The parties' perception of the standard that applies to the submission of resignations is remarkably similar. In general, an individual who has stated that they would resign at a later date may change his or her mind and rescind his or her resignation prior to that date. However, the employer in order to preserve its operations does have the right to take certain actions to fill the opening to be created by the resignation if it has a reasonable basis to believe that the resignation will effective.

This standard must be interpreted under the unique circumstances in this case. The standards regarding resignation usually apply to solitary decisions made by one individual. In this case it is clear that the resignations were part of a concerted action executed in order to force either a change in the relationship between the Leagues and the Commissioner's Office or at least a modification of the Commissioners implementation of its plan regarding the supervision of Umpires. The Employer in this case was not faced with the circumstance of whether they should replace one or two employees. It had a choice either to negotiate with the Union or substantially change its management position with respect to the supervision of Umpires or suffer a significant loss of services during a critical time in its operational year. The resignation strategy was intended to disrupt Baseball's operations unless certain Association expectations were met. Given this intent, it is unreasonable to expect Baseball's management to "stand pat" in the hopes that umpires would somehow change their mind.

Though testimony, the Association stated that the resignation "strategy" was presented as an alternative to a

strike in violation of the no strike clause. According to Mr. Crawford, the resignation strategy was a "ploy" or a "bluff" that was created to force the Leagues and the Commissioner's Office to recognize them and negotiate with them concerning certain issues of governance that had been arising over the previous six to eight months. However, from the Baseball's perspective, even though there was no immediate walkout, the Umpires' had made it clear, given the number of resignations, that unless certain changes were made within the management policy of the Leagues and the Commissioner's Office, that effective September 2 they were prepared to withdraw their services to Baseball, even though the collective bargaining agreement created an responsibility on each umpire to faithfully carry out his obligations as an employee of the league during the term of that agreement.

This intent was demonstrated by the Association's actions after the resignations were tendered. In addition and to the language in the letter, subsequent statements made in the media supported the Association's intent that they were serious about the resignations. For example on July 16th, 1999, Mr. Phillips was quoted in the press as stating that, "If you threaten to fire us tomorrow, if you tell the public that we really stink, if you continue to denigrate and humiliate us, if you're smug and arrogant in dealing with us, then we'll show you." He was also quoted as stating that "We'll resign the positions, and when we resign the positions, we'll have you pay us 15.5 million in severance rather than allow you the right at the end of the season to fire everybody and try to steal the 15.5 million from us."

The Association has described such statements as merely negotiating tactics. However, each Umpire who tendered his resignation also signed personal service

contracts with Professional Umpire Services Corporation. The contract provided that the Umpire shall "render services exclusively for the corporation and/or those persons, customers, clients, licensees or assignees to whom the corporation contracts to provide Umpire services." Even though the incorporation procedure was not completed and the contracts were not countersigned, the formation of these documents represented significant initial steps that were provocative enough to represent that it was going to follow through with its threats.

Moreover, on July 23, 1999, eight days after the submission of the resignations and after, according to Mr. Phillips' testimony, he communicated to Baseball management that he was ready to "surrender," the Association filed an action in the Federal District Court in the Eastern District of Pennsylvania, not seeking to ensure the positions of the resigning Umpires with Major League Baseball, rather seeking a declaratory judgment regarding a declaration of rights and duties of the Leagues under the agreement with respect to the payment of termination benefits. Therefore, even after the alleged meeting in Milwaukee in which a number of replacement Umpires were hired and the submission of rescissions of the resignations, the Association, at least as of the 23rd of July, had vowed that it would continue to fight on and seek the termination pay under Article VIII-D of the agreement. This, to use the Association's description, presented in this Arbitrator's view, a bona fide action in which the remaining majority of resigning Umpires represented that they were going to indeed carry out their threat to resign.

The concerted nature of this action clearly signaled that each umpire was ready to abrogate his responsibility and breach the agreement. This was contrary to the mutual obligation of the parties as intended in the Col-

lective Bargaining Agreement and cannot be viewed being protected under the terms therein. Given the actions of the MLUA with respect to its resignation strategy, the hiring of replacements in order to ensure that Baseball would continue to operate on September 2nd was not a violation of the collective bargaining agreement. Management was entitled to rely upon these representations and to hire replacements to meet its operational needs and given the volatility of the situation, to encourage rescissions.

The Rescissions

The evidence further indicated that beginning July 16 through July 27, 1999, there was activity involving communications between the Commissioner's Office, certain Umpire supervisors and a number of Umpires, including those who were considered dissidents within the MLUA. As the calls increased the rescissions began to arrive at the offices of the Leagues. The Association has basically tried to describe these calls as a conspiracy on the part of the Leagues to discriminate against certain members and to support an insurgent movement within the Association, all contrary to the collective bargaining agreement. A close view of the evidence indicates that, indeed, there were a number of conversations between supervisors of the Leagues and a number of Umpires. In the American League, supervisors had been calling individual Umpires in the American League to encourage them to rescind their resignations. The Association argued that certain Association activists, supporters of the MLUA in the American League, did not receive those calls. The supervisors in the National League, on the other hand, were calling a number of National League umpires to encourage them to remain steadfast and support the Association. None of the National

League umpires received any notice that their positions were being filled.

The Association argued that this was a conspiracy concocted by the Commissioner's Office in order to divide the Association. I cannot reach the same conclusion. The calls made by the supervisors reflected the differences in the relationship between the Association and the Leagues that had existed for quite some time. The evidence clearly demonstrated that Mr. Coleman, as President of the National League had a close relationship with Mr. Phillips in particular and with the Association leadership in general. This close relationship also applied to the Leagues supervisors. The American League on the other hand did not have such a relationship. The substantial majority of dissident umpires worked in the American League.

In this regard I also credit the testimony of the members of the Commissioner's staff who stated that one of the reasons the Leagues decided to hire permanent replacements was to encourage individual Umpires to reconsider their decision to resign and rescind their resignations. It would be contrary to its management interest for it to encourage a strategy of encouraging one group to rescind their resignations while encouraging another group to continue hold out.

The Association has attempted to present evidence showing that there were a number of telephone calls between the coordinators of the dissident faction in the American League during the meeting in Milwaukee on July 22. There was no testimony, however, concerning the content of those conversations. However, the fact that there were phone calls made does not, in my view, present sufficient evidence to show that there was any specific coordinated discrimination in which the Association had somehow encouraged the new Association to

call certain Umpires. Therefore, I cannot conclude that the Leagues conspired to discriminate against certain umpires based upon their support of the Association.

Status of Drew Coble and Greg Kosc

On or about July 22, 1999, questions arose regarding the status of two particular American League Umpires, Mr. Drew Coble and Mr. Greg Kosc. According to the testimony presented at the hearing, Mr. Coble was not present at the July 14th meeting because he had taken a leave of absence in order to tend to his terminally ill wife. There is no question that he did not submit a written resignation. However, there were statements attributable to Mr. Coble in the media stating that he did indeed resign from the Association. As a result, Derek Irwin called Coble to determine whether he had indeed resigned.

There is substantial disagreement concerning actually what was said in that conversation. Mr. Coble stated that he had been involved with the care of his wife and he instructed Mr. Irwin to speak to Phillips. Irwin, on the other hand, stated that Coble did state that he resigned, and had created a memorandum to that effect at least two weeks after the conversation.

It is critical given the consequences of the resignations that there must be substantial evidence to establish each umpires intent. With the exception of Mr. Coble and Mr. Kosc each of the resignations and rescissions were supported by signed documents. Given this pattern, the Leagues must present sufficient evidence to demonstrate that Mr. Coble indeed resigned. The only evidence of Cobles intent is based upon an oral conversation. In this regard, Irwin's testimony had been substantially contradicted by statements attributable to him in January, 2000 in which he admitted that Mr. Coble did not resign

and that he created a memorandum saying that he did so in preparation for potential litigation.

Given this standard, that there must be a clear and unequivocal intent to resign, I must find that there was insufficient evidence to demonstrate Cobles intent. He is therefore entitled to retain his position on the umpiring staff of the American League. Therefore, I shall order his reinstatement to Major League Baseball with full back pay.

Mr. Greg Kosc submitted a resignation but rescinded his resignation prior to the 27th when there were positions open within the American League. The rescission was faxed to the League office and clearly indicated his intent. Again, statements appeared in the media attributable to Mr. Kosc that indicated that he might reverse his position resign from Major League Baseball. This necessitated a call from Mr. Irwin.

The parties disputed that content of the conversation. There is no dispute that Mr. Kosc stated that he remained a supporter of the Association. Even if we credit the Leagues version of Kosc's intent, he stated that he would rescind his former rescission. However, Kosc never memorialized his intent in a subsequent written document. Given the standard set forth above, I must also find that there was insufficient evidence to establish that Mr. Kosc intended to rescind the rescission of his resignation. If his rescission was honored lie would have remained on the staff of the American League. And therefore, I order his reinstatement to Major League Baseball as an Umpire with full back pay and benefits.

The Retention of Umpires

On July 27, 1999, Pat Crawford faxed a letter to the Leagues stating that the remaining Umpires who had resigned were withdrawing their "notices of intent to

resign" without prejudice. This included 32 Umpires in the National League and 6 Umpires in the American League. By this date, those who had rescinded their resignations or were permanently hired as replacements had filled the staff of umpires for the American League.

As stated above, in the American League, the League President had the right to fill positions with permanent replacements based on the concerted but unprotected action by the MLUA. Furthermore, Article VIII B of the collective bargaining agreement clearly gives the League Presidents the discretion to determine the size of its staff as long as the number of Umpires did not fall below 32 per League. Thus, the League Presidents were not required to increase its staff in order to accommodate the remaining rescinding Umpires. Therefore, I must conclude that the decision of the President of the American League not to accept the rescissions of the remaining Umpires was not in violation of the Agreement.

The circumstances in the National League were substantially different. Due to the small number of prior rescissions, there were 32 Umpires who had withdrawn their resignations in the July 27 letter, but there were only 19 positions open in which to place these individuals.

According to the evidence presented, Mr. Coleman and Mr. Kheel struggled to provide a standard to rely upon in deciding which Umpire rescissions would be accepted within the National League. Mr. Kheel sought the counsel of Mr. Phillips, who stated that all of the Umpires in the National League, including those who had rescinded earlier and those who were hired as permanent replacements should be ranked according to seniority, and the most senior employees should be retained. This was not acceptable to Mr. Coleman, thus no agreement was reached with Mr. Phillips.

Mr. Kheel testified that he had counseled and Mr. Coleman agreed that the determination of which umpires would be retained would be based on "merit and skill." This term is set forth in Article VIII A of the Agreement and states as follows: "All umpires shall be selected or retained in the discretion of the League Presidents on the basis of merit and the skill of the umpire to perform to Major League standards."

The Association maintains that this language requires the consideration of "all" Umpires in making this determination. The Association considers this term to include all those who did not resign, those who resigned and rescinded or were hired by the Leagues since July 15, 1999. According to the Association, this term appeared as part of the agreement after the Umpires had taken a job action by refusing to sign individual agreements. Replacements were hired. As part of the resolution of the dispute, it was agreed that in order to guarantee that the new staff at that time would not be discriminated against based upon their status as replacements or their prior Association activity. Thus, the entire staff would receive consistent treatment.

The facts in this case are quite different. Certain members of the Association had resigned and indicated that they would sever their relationship and the League Presidents filled positions with permanent replacements in reliance upon those representations. In the prior instance, the League Presidents hired temporary replacements and had agreed to retain all of the Umpires. As part of that settlement, they included that language to eliminate any potential recriminations against umpires based upon their former status as replacements or supporters of the Association. Logically, as part of the agreement to accommodate all umpires, the Presidents had to agree to increase staff. In this case, the Presidents had clearly not

chosen to exercise their discretion and increase the umpiring staff but rather to continue to maintain the current levels of employment. Therefore, the League Presidents were under no obligation under this agreement and in these circumstances to include all umpires including those who had not resigned and those who had rescinded within its consideration of which Umpires to retain.

Mr. Coleman testified that he determined which Umpires he would retain based on "merit and skill." In defining this term he included the considerations of creating a "balanced staff," including a balance of junior, mid-term and senior Umpires with the appropriate number of crew chiefs, and also including appropriate balance considering issues of ethnicity and diversity. Article VIII-A gives the League Presidents substantial discretion in deciding whether to retain or otherwise sever an Umpire. If there is a question raised concerning a decision by a League President, the agreement only provides that the grievant is entitled to a hearing before that League President in which the "discharge" would be subject to a full review and re-examination. The decision of that League President would then be final and binding.

The language in this agreement is highly unusual because unlike many labor-management agreements, there is no just cause standard that requires a basis of evidence to support a reason to sever an individual employee from employment. In this case, the language demonstrates an intent on the part of the parties to give the League President substantial discretion in employment decisions regarding the tenure of Umpires. The only limitation, as stated in the agreement, provides that while the decision is final and binding, it must be based

on "merit and skill" to perform to Major League standards.

The Leagues have argued that this gives the League Presidents the right to interpret merit and skill quite broadly. While I, for the most part, agree with that interpretation, the discretion of the League Presidents in this regard is not limitless. Rather, the decision must be one that can be reasonably articulated and related to issues of merit and skill and riot arbitrary or capricious.

In this regard, President Coleman provided testimony explaining the reasons why he decided not to accept the rescissions of 13 National League Umpires[7]. In reviewing these explanations in light of the broad discretion given to League Presidents, it is this Arbitrator's view that Mr. Coleman must articulate an explanation that has some relationship to the merit and skill of that Umpire as well as the other factors that he considered. If Mr. Coleman was unable to articulate a basis, then I must conclude that he abused his discretion. The mere statement that he had to find the "numbers" required to fill the positions is an arbitrary consideration and must be overruled.

Indeed in determining the appropriate merit and skill, while it is appropriate to consider the balance of one's staff, there was indeed evidence available in which Umpires had been previously evaluated over a number of years and their abilities had been discussed in this regard, the Association has argued that Mr. Coleman abused his discretion because he retained lower rated Umpires while accepting the resignations of more senior and higher rated Umpires. Even though these evaluations are relevant, there is no language in the agreement that

[7] Mr. Coleman testified that in making many of the decisions he consulted with Paul Runge who had detailed knowledge of each Umpire.

controls whether or how these evaluations are to be used by the League President.[8] Of course logic would indicate that the League President should consult prior evaluations, however that does not mean that they represent the exclusive criteria in determining relative skill and merit.

Each of Mr. Coleman's explanation was subject to extensive cross-examination by the Association. For the remainder of this opinion, this arbitrator will review the reasons offered by Coleman applying the standard provided above to determine whether, based on that explanation, his decision not to retain a particular Umpire was and abuse of discretion.

Gary Darling

Mr. Coleman testified that the reason he decided to accept the resignation of Mr. Darling was based on, "the same thing," numbers and that there had been a previous incident involving the owner of one of the clubs in which Mr. Darling had been involved in a confrontation on the field, and then when asked about it, Mr. Coleman had felt that Mr. Darling was not forthcoming. Nevertheless, he felt that Mr. Darling was a good Umpire; that the incident had been resolved by the Association and essentially "put to bed."

While this incident may have caused Mr. Coleman some concern, I cannot find that this was related in any way to Mr. Darling's ability on the field. Therefore, I must conclude that Mr. Coleman's determination with respect to Mr. Darling had exceeded his discretion under the criteria of merit and skill as defined in his earlier

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[8] The only language in the agreement relating to evaluations is contained in a side letter dated May 1, 1995 in which the parties agree that the Leagues would employ full time evaluators and the League Presidents would consult with the MLUA in their selection.

testimony. Therefore, Mr. Darling's grievance will be sustained.

Bob Davidson

Mr. Coleman testified that he found Mr. Davidson to be a competent National League Umpire but stated that he had to speak to Mr. Davidson on several occasions concerning his attitude and judgment with respect to certain incidents in 1998 and 1999. As a result of at one of those incidents, Mr. Davidson did not receive a postseason playoff assignment, but had improved to a point where he did receive a postseason assignment in a subsequent year.

Given the broad nature of the President's discretion, it is clear that he based the decision to accept the resignation of Mr. Davidson based on what he perceived was the totality of his judgment and attitude over a number of years. While there may be other Umpires who had been rated lower whose rescissions were accepted, Mr. Coleman did articulate a basis for not retaining Mr. Davidson based on his performance on the field. Therefore, I must conclude that Mr. Davidson's grievance shall be denied.

Eric Gregg

Mr. Coleman testified that he had been concerned about Mr. Gregg's skill for quite some time, especially with respect to his ability to keep up and follow some of the umpiring patterns that were required on the field. During the summer of 1999, Mr. Gregg was suspended due to this consideration. Mr. Coleman further testified that he had substantial concern regarding his diminished abilities as well as his certain "attitudinal factors." He also testified that his concern was reflected by a number

of crew chiefs. This substantial concern about Mr. Gregg's skill and merit on the field caused Mr. Gregg to be the first person Mr. Coleman decided not to retain.

Based upon this evidence, it is my determination that indeed Mr. Coleman had articulated a basis for which he had decided to accept the resignation of Mr. Gregg, and therefore, his grievance is denied.

Thomas Hallion

Mr. Coleman testified that even though Mr. Hallion had improved over the years prior to the submission of his resignation, there were a number of issues he had with him concerning issues of temperament. During the summer of 1998, he was suspended for a few games due to his temperament.

This testimony clearly articulated a basis under the agreement for accepting Mr. Hallion's resignation, therefore, his grievance is denied.

William Hohn

Mr. Coleman testified that the only reason why he accepted the rescission of Mr. Hohn was because, even though he had no difficulty working with him and he had done a good job as an Umpire, he "needed the numbers." As indicated above, just the mere statement that he "needed the numbers," to this Arbitrator it is an insufficient and rather arbitrary basis upon which to determine whether to accept this Umpire's resignation. Therefore, I must sustain the grievance of Mr. Hohn.

Paul Nauert Bruce Dreckman Sam Holbrook

Each of these Umpires was considered concurrently during the hearing. Mr. Nauert, Dreckman and Holbrook were all relatively young and the least senior Umpire/

grievants but had clearly progressed before their resignations were accepted. Indeed, Mr. Coleman had promoted each of these Umpires from the minor leagues during his tenure as President. The only reason Mr. Coleman articulated for accepting the resignations of these three Umpires was because, again, he needed the numbers.

The lack of seniority of these umpires places them in a unique position with respect to the applicability of Article VIII A of the agreement. The first sentence of the provision clearly states that the limitations on the President with respect to tenure only applies to umpires with 5 or more years of seniority.

The evidence herein indicates that Umpires Dreckman and Holbrook were hired in 1998 while Umpire Nauert was hired in 1999. Under the terms of the agreement under which this Arbitrator is bound, the tenure of these three individuals was subject to the unfettered discretion of the League President. Therefore, even though the League President had stated that he needed to accept the resignations of Mr. Nauert, Mr. Dreckman and Mr. Holbrook in order to meet the numbers required for staffing purposes, these three Umpires are not eligible for the limited protections of Article VIII-A of the agreement. Therefore, on that basis alone, I must deny their grievances.

Terry Tata

Mr. Coleman testified that Mr. Tata was a very senior Umpire and was considered to be a very strong crew chief. However, in order to balance the number of older and more senior Umpires, it was necessary to accept his resignation. In this regard Mr. Coleman testified that he based this conclusion on discussions he had with Mr. Tata during which he stated that he was planning on retiring after another year. Based on this conversation,

he knew that Mr. Tata was coming to the end of his career, and since he had to "get to the numbers," he accepted his resignation. There was no indication that there was a concern or question regarding Mr. Tata's skills as an Umpire.

This Arbitrator, while acknowledging the need for the President to reach a certain balance in his umpiring staff, cannot rely on what appears from the testimony to be casual discussions in which Mr. Tata may have stated that he was considering retiring in a year. Indeed, there was no other evidence presented to demonstrate Mr. Tata's intent to retire. Therefore, given the fact that there were no other questions articulated regarding Mr. Tata's ability to meet Major League standards as an Umpire, I must sustain Mr. Tata's grievance.

Frank Pulli

Mr. Pulli, like Mr. Tata, was also a very senior Umpire, and indeed, Mr. Coleman recognized this in his testimony. However, Mr. Coleman also testified that there had been concern exhibited regarding his mechanics on the field. Mr. Coleman testified that he had spoken with his Umpire supervisors, and this question had been raised on a number of occasions. Even though his mechanics were suspect, the supervisors were able to discount those mechanical issues chiefly because Mr. Pulli was able to get the calls correct from those unusual positions. In addition, Mr. Coleman cited an instance in which Mr. Pulli had failed to follow appropriate procedure by relying on a TV replay to make a call. This, clearly, from Mr. Coleman's point of view, was inappropriate. Mr. Coleman then stated that even though he had discussed this with Mr. Pulli, this was not a consideration in terms of the acceptance of his rescission.

In reviewing Mr. Coleman's testimony, it is clear that with respect to Mr. Pulli, that even though there had been some questions about his mechanics, that he was able to meet Major League standards in the broadest sense. Furthermore, the only other motivating factor appeared to be, again, his indication that he had intended to retire in the near future. Based upon this evidence, I must conclude again that the decision to accept the resignation of Mr. Pulli exceeded Mr. Coleman's discretion. Therefore, his grievance is sustained.

Larry Poncino

Mr. Coleman testified that he thought that Mr. Poncino was an excellent Umpire. Indeed, he testified that he thought that Mr. Poncino was "good and tough," that he was a good ball and strike Umpire and that he was in the final cut in terms of accepting resignations. However, faced with the need to make the required staffing numbers, he had to cut into the "muscle" of the National League staff.

President Coleman did not articulate any basis, based on Mr. Poncino's merit and skill, for accepting his resignation. Therefore, given the standard as set forth above, I must sustain Mr. Poncino's grievance.

Joe West

Mr. West was a long term Umpire that Mr. Coleman considered to be a very good ball and strike Umpire and good technically. However, Mr. Coleman testified that he had had several discussions with Mr. West regarding the issues of his temperament and judgment. As a result, because of those issues that he had with Mr. West's temperament over the years, he would normally assign Mr. West with what was a "strong crew chief" who could

deal with any issues regarding Mr. West's temperament and judgment on the field. At the same time, Mr. Coleman testified that Mr. Runge considered Mr. West to be one of the best Umpires on his staff. Mr. West had been involved in controversies but Mr. Coleman testified that nothing of that nature had happened in the "recent past." When asked to quantify that term, he stated that nothing had happened in the prior five years. Moreover, he had never been disciplined as an Umpire.

Mr. Coleman cited some specific instances in which Mr. West had not exercised appropriate judgment. In one instance in the second game of a doubleheader, Mr. West had ejected the manager and coach because they did not present a line-up card in a timely manner. He also had been spoken to for umpiring games out of uniform. In general, he considered Mr. West to be a very controversial Umpire based upon his prior judgment and temperament, and he felt that it was appropriate to accept Mr. West's resignation.

Unlike any of the other Umpires considered, Mr. Coleman's testimony regarding Mr. West was the most inconsistent. While he was viewed as controversial and had problems with temperament, he was considered to be one of the best Umpires by his own supervisor. Moreover, Mr. Coleman stated that none of the incidents cited occurred in the recent past as compared to other Umpires who had resigned and were under consideration at this point. Based upon this testimony, while Mr. West seemed to cause an emotional reaction with Mr. Coleman there was no consistent testimony that appeared to relate the decision to merit and skill. I must therefore conclude that Mr. Coleman abused his discretion and Mr. West's grievance should be sustained.

Larry Vanover

Mr. Coleman testified that Mr. Vanover had been improving in his attitude and his abilities to the point that he considered him to be a very competent Umpire, but Mr. Coleman stated that, again, he had to reach the appropriate staffing numbers and decided, therefore, to accept Mr. Vanover's resignation.

Since Mr. Coleman concluded that the decision to accept Mr. Vanover's resignation was based on staffing numbers rather than articulate a judgment based on merit and skill, it is my view with respect to Mr. Vanover that, Mr. Coleman had abused his discretion in accepting his resignation. Therefore, I must conclude that his grievance shall be sustained.

REMEDIES

This Arbitrator has sustained the grievances of certain Umpires based on appropriateness of the reasons given for the acceptance of their resignations under the collective bargaining agreement. With respect to Mr. Coble and Mr. Kosc, I must find that these men are entitled to full reinstatement, including the crediting of benefits, including seniority, as well as any medical and retirement benefits. Indeed, these individuals did not meet the criteria of a resigning Umpire in that in Mr. Coble's case, he had not submitted a written resignation, and in Mr. Kosc's case, he did not submit any document indicating that he had indeed reversed his decision to rescind his resignation.

With respect to the National League Umpires, the Leagues have requested that if there was a finding in any respect that Mr. Coleman had abused his discretion, that the matter be remanded to the parties so that the Leagues

could "create a record" further substantiating the reasons for the termination of these Umpires. I cannot accept this proposed remedy. Under the current circumstances, the position of the President of the National League with its supervisory authority over umpires as described in 1999 no longer exists. Therefore, it would be inappropriate to create a structure in order to "make a record" when the basis for that record no longer exists.

In addition, Mr. Coleman had the opportunity to fully testify as to his reasons for making the decision with respect to these National League Umpires. The explanations for his decision was challenged though cross-examination. Therefore, and in the interest of finally reaching some closure with respect to this matter, it would be inappropriate to have Mr. Coleman "rethink" his decision.

Accordingly, I am going to order that the following Umpires be reinstated with full back pay, seniority and benefits: Mr. Gary Darling, Mr. Bill Hohn, Mr. Terry Tata, Mr. Frank Pulli, Mr. Larry Poncino, Mr. Joseph West and Mr. Larry Vanover.

The Association argues that the grievants, if successful, were entitled to certain bonus pay for playoffs for any postseason assignments that they would have received but for the termination of their services. It is my view that with respect to the grievants whose grievances were sustained, that any additional entitlement would have been speculative. Therefore, I cannot conclude that any of the grievants to be reinstated should receive any additional bonus pay.

AWARD

Based upon the evidence presented, I find that the Umpires who were members of the MLUA bargaining unit had indeed resigned and the Leagues did not violate the collective bargaining agreement when it decided to hire replacement Umpires as a consequence of those submitted resignations. Furthermore, the Leagues did not violate the collective bargaining agreement with respect to those American League Umpires who rescinded their resignation letters after the staff of the American League had been filled. However, the grievances are sustained with respect to American League Umpires Drew Coble and Greg Kosc in that there was insufficient evidence to show that, in Mr. Coble's case, that he had intended to resign his position, and in Mr. Kosc's case, that he intended to withdraw his previous rescission of his resignation.

Finally, although the National League President had substantial discretion in determining which resignations to accept with respect to the remaining Umpires who had rescinded their resignations as of July 27, 1999, I find that the National League President abused his discretion in that he failed to articulate a reason to accept these resignations based upon the criteria he established with respect to the following Umpires: Gary Darling; Bill Hohn, Terry Tata, Frank Pulli, Larry Poncino, Joseph West and Larry Vanover. These umpires, along with Drew Coble and Greg Kosc shall be reinstated to their full positions and shall be paid full back pay, and benefits. All other grievances are denied.

It is noted that prior to the submission of this Award, Major League Baseball has entered into a collective bargaining relationship with the World Umpires Association and has reached a new collective bargaining agreement.

All back pay and benefits owed the grievants whose grievances were sustained shall be in accordance with the terms and conditions set forth in the new agreement.

Dated: Friday, May 11, 2001

ALAN A. SYMONETTE

Alan A. Symonette, Impartial Arbitrator
Philadelphia, Pennsylvania

BEFORE THE
AMERICAN ARBITRATION ASSOCIATION

Case No. 14 300 1395 99

In the Matter of the Arbitration Between:

The Major League Umpires Association

and

The National League of Professional Baseball Club &
The American League of Professional Baseball Club

Grievance: Termination by employer of 13 NL and 9 AL Umpires in violation of the Collective Bargaining Agreement

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RULINGS CONCERNING EMPLOYER'S MOTION TO DISMISS, ORDER OF SUBMISSION, LOCATION, AND REQUEST FOR DOCUMENTS

Introduction

On August 27, 1999 The Union, the Major League Umpire's Association through its counsel filed a Demand for Arbitration pursuant to the Labor Arbitration Rules of the American Arbitration Association. The Demand sought to arbitrate a dispute that had arisen between the

Union and the National League of Professional Baseball Clubs and the American League of Professional Baseball Clubs (collectively referred to as "the Employer"). The nature of the dispute as described by the Union was "The termination by the Employer of 13 NL Umpires and 9 AL Umpires in violation of the collective bargaining agreement."

The undersigned was selected by the parties, from a panel submitted by the Association, to arbitrate the dispute. On October 29, 1999 the parties engaged in a conference call during which the arbitrator was informed that counsel for the employer would be submitting a motion to dismiss. The Arbitrator was also informed that there was a dispute concerning certain requests made in a supoena ducas tecum submitted by the Union for certain documents allegedly in the possession of the Employer. The Employer also submitted its own request for documents allegedly in the possession of the Union. The parties agreed that a hearing be held in order to stipulate to a response schedule to the motion to dismiss, to receive objections to the requests for documents and to resolve or hear arguments concerns the procedure of the hearing.

The hearing was held as agreed on November 5, 1999. During the hearing, the parties were represented by counsel who presented arguments concerning the requests. The parties also agreed to provide a number of documents. Given the possibility that a number of documents may be excluded from submission on the basis of privilege, the parties agreed to maintain lists containing descriptions of such documents. Finally, on November 22, 1999 the Association submitted copies of the parties' memoranda in support of the motion to dismiss and opposition thereto to the Arbitrator for consideration.

Discussion

The Employer has contended that the dispute is not substantively arbitrable because, according to Article VIII A of the Collective Bargaining Agreement, umpires, with five or more years of service, who are discharged by one of the Employers is entitled to a hearing before the League President and the decision of the League President is "final and binding." The Union on the other hand maintains that this matter is subject to the Arbitration provisions set forth in Article XV of the Agreement. According to the language of Article XV, disputes "concerning a claimed violation of the provisions of this Agreement" shall be referred to arbitration.

I have read the memoranda and reviewed the contract language in dispute. It is my conclusion that the language of Article VIII A does give League Presidents final a binding authority to terminate umpires. However, the paragraph following that provision, places two specific limitations on that authority. First that the discretion to be exercised by the League Presidents is limited to issues concerning the "merit and skill of the umpire to perform to Major League standards." Secondly there can be "no discrimination or recrimination" in the exercise of this discretion. Accordingly, to the extent that the Presidents terminated or accepted the resignations of the 22 umpire grievants, as the case may be, the issue of whether this decision was an abuse of its discretion or was performed in a discriminatory or recriminatory manner, is subject to arbitration.

For this very same reason however, I have also decided that the Union shall proceed first in its presentation at the hearing. Given that the language of the Article VIII A does give the League Presidents certain authority with respect to the termination of the umpires,

the Union should present first concerning the Employer violated the Agreement by abusing that Authority.

Rulings

Based upon the discussion above and the discussions at the November 5, hearing I hereby make the following rulings.

1. The Employer's Motion to Dismiss is Denied.
2. The Union shall proceed first in the hearing on the merits. The hearings shall be held on December 13, 14, 15 and 16, 1999 in Philadelphia, Pennsylvania. Unless otherwise agree, the hearings will begin at 10:00 am.
3. The parties stipulated to certain requests for documents. Others were withdrawn. Those stipulations withdrawals are set forth in the record of hearing. With respect to those in which objections were raised, the undersigned makes the following rulings:

With respect to the Subpoena of the Major League Umpires Association:

1. Request 1 is granted but limited to the Commissioner, the League Presidents and the individuals specifically set forth in subparagraph d limited to the period from July 1, 1999 to August 30, 1999.
2. Request 2 is granted limited to the period of January, 1999 to August 30, 1999.
3. Request 4 is denied as being overbroad.
4. Request 5 is granted buf limited to January 1, 1995 to the present.

5. Request 6 is granted but limited to the issues concerning the supervision of umpires from January 1, 1995 to the present.

6. Request 7 is granted but limited to the issues concerning the supervision of umpires from January 1, 1995 to the present.

7. Request 8 is granted.

8. Request 10 is granted but limited to all umpires employed by the Leagues between January 1, 1995 and was on the payroll as of August 30, 1999.

9. Requests 12 and 13 and 14 are granted as limited to January 1, 1990 to the present.

10. Request 15 is granted.

11. Requests 16 and 17 are granted but limited to January 1, 1990 to August 30, 1999.

12. Request 18 is granted but limited to January 1, 1999 to August 30, 1999.

13. Request 19 is granted with respect to the consideration of the resignations or withdrawal of resignations of umpires from January 1, 1999 to August 30, 1999.

14. Request 20 is granted with respect to the process used in the hiring of umpires from January 1, 1995 to the present.

15. Request 21 is granted.

16. Request 22 is granted but limited to those umpires rehired after submitting their resignations.

17. Requests 24 through 29 inclusive are granted to the extent that these requests are included in Request 20.

18. Requests 32 through 35 inclusive are denied on the basis of relevance. These requests may be reconsidered if or when a foundation is laid.

With respect to the Subpoena submitted by the Employer, the parties were able to agree to requests 1 through 8. The Union objected to request 9. The request is granted and applies to both parties and is limited to exhibits to be presented as part of each party's case in chief.

Dated: November 26, 1999

ALAN A. SYMONETTE

Alan A. Symonette, Arbitrator